

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Robaina offered the following:

Amendment (with title amendment)

Remove lines 130-426 and insert:

Section 1. Subsections (3) and (5) of section 718.111,
Florida Statutes, are amended to read:

718.111 The association.--

(3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT,
SUE, AND BE SUED.--

(a) The association may contract, sue, or be sued with
respect to the exercise or nonexercise of its powers. For these
purposes, the powers of the association include, but are not
limited to, the maintenance, management, and operation of the
condominium property.

(b) After control of the association is obtained by unit
owners other than the developer, the association may institute,
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maintain, settle, or 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, but not limited to, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; representations of the developer pertaining to any existing or proposed commonly used facilities; and protesting ad valorem taxes on commonly used facilities and on units; and may defend actions in eminent domain or bring inverse condemnation actions.

(c) If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. Nothing herein limits any statutory or common-law right of any individual unit owner or class of unit owners to bring any action without participation by the association which may otherwise be available.

(d) The borrowing of funds or committing to a line of credit by the board of administration shall be considered a special assessment, and any meeting of the board of administration to discuss such matters shall be noticed as provided in s. 718.112(2)(c). The board shall not have the authority to enter into a line of credit or borrow funds for any purpose unless the specific use of funds from the line of credit or loan is set forth in the notice of meeting with the same specificity as required for a special assessment or unless the borrowing or line of credit has received the prior approval of

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not less than two-thirds of the voting interests of the
association.

(5) RIGHT OF ACCESS TO UNITS.--The association has the
irrevocable right of access to each unit during reasonable
hours, when necessary for the maintenance, repair, or
replacement of any common elements or of any portion of a unit
to be maintained by the association pursuant to the declaration
or as necessary to prevent damage to the common elements or to a
unit or units. Except in cases of emergency, the association
must give the unit owner advance written notice of not less than
24 hours of its intent to access the unit and such access must
be by two persons, one of whom must be a member of the board of
administration or a manager or employee of the association and
one of whom must be an authorized representative of the
association. The identity of the authorized representative
seeking access to the unit shall be provided to the unit owner
prior to entering the unit.

Section 2. Paragraphs (c), (d), and (h) of subsection (2)
of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.--

(2) REQUIRED PROVISIONS.--The bylaws shall provide for the
following and, if they do not do so, shall be deemed to include
the following:

(c) Board of administration meetings.--Meetings of the
board of administration at which a quorum of the members is
present shall be open to all unit owners. Any unit owner may
tape record or videotape meetings of the board of
administration. The right to attend such meetings includes the

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73 right to speak at such meetings with reference to all designated
74 agenda items. The division shall adopt reasonable rules
75 governing the tape recording and videotaping of the meeting. The
76 association may adopt written reasonable rules governing the
77 frequency, duration, and manner of unit owner statements.
78 Adequate notice of all meetings, which notice shall specifically
79 incorporate an identification of agenda items, shall be posted
80 conspicuously on the condominium property at least 48 continuous
81 hours preceding the meeting except in an emergency. If 20
82 percent of the voting interests petition the board to address an
83 item of business, the board shall at its next regular board
84 meeting or at a special meeting of the board, but not later than
85 60 days after the receipt of the petition, place the item on the
86 agenda. Any item not included on the notice may be taken up on
87 an emergency basis by at least a majority plus one of the
88 members of the board. Such emergency action shall be noticed and
89 ratified at the next regular meeting of the board. However,
90 written notice of any meeting at which nonemergency special
91 assessments, or at which amendment to rules regarding unit use,
92 will be considered shall be mailed, delivered, or electronically
93 transmitted to the unit owners and posted conspicuously on the
94 condominium property not less than 14 days prior to the meeting.
95 Evidence of compliance with this 14-day notice shall be made by
96 an affidavit executed by the person providing the notice and
97 filed among the official records of the association. Upon notice
98 to the unit owners, the board shall by duly adopted rule
99 designate a specific location on the condominium property or
100 association property upon which all notices of board meetings

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shall be posted. If there is no condominium property or association property upon which notices can be posted, notices of board meetings shall be mailed, delivered, or electronically transmitted at least 14 days before the meeting to the owner of each unit. In lieu of or in addition to the physical posting of notice of any meeting of the board of administration on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Notice of any meeting in which regular or special assessments against unit owners are to be considered for any reason shall specifically state that assessments will be considered and the nature of, actual amount of any bids or proposals for estimated cost, and description of the purposes for such assessments. Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to the provisions of this paragraph. Meetings of a committee that does not take final action on behalf of the board or make

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129 recommendations to the board regarding the association budget
130 are subject to the provisions of this section, unless those
131 meetings are exempted from this section by the bylaws of the
132 association. Notwithstanding any other law, the requirement that
133 board meetings and committee meetings be open to the unit owners
134 is inapplicable to meetings between the board or a committee and
135 the association's attorney, with respect to proposed or pending
136 litigation, when the meeting is held for the purpose of seeking
137 or rendering legal advice.

138 (d) Unit owner meetings.--

139 1. There shall be an annual meeting of the unit owners
140 held at the location provided in the association bylaws and, if
141 the bylaws are silent as to the location, the meeting shall be
142 held within 45 miles of the condominium property. However, such
143 distance requirement does not apply to an association governing
144 a timeshare condominium. Unless the bylaws provide otherwise, a
145 vacancy on the board caused by the expiration of a director's
146 term shall be filled by electing a new board member, and the
147 election shall be by secret ballot; however, if the number of
148 vacancies equals or exceeds the number of candidates, no
149 election is required. The terms of all members of the board
150 shall expire at the annual meeting and such board members may
151 stand for reelection unless otherwise permitted by the bylaws.
152 In the event that the bylaws permit staggered terms of no more
153 than 2 years and upon approval of a majority of the total voting
154 interests, the association board members may serve 2-year
155 staggered terms. If no person is interested in or demonstrates
156 an intention to run for the position of a board member whose

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157 term has expired according to the provisions of this
158 subparagraph, such board member whose term has expired shall be
159 automatically reappointed to the board of administration and
160 need not stand for reelection. In a condominium association of
161 more than 10 units, coowners of a unit may not serve as members
162 of the board of directors at the same time. Any unit owner
163 desiring to be a candidate for board membership shall comply
164 with subparagraph 3. A person who has been suspended or removed
165 by the division under this chapter, or who is delinquent in the
166 payment of any fee or assessment as provided in paragraph (n),
167 is not eligible for board membership. A person who has been
168 convicted of any felony in this state or in a United States
169 District or Territorial Court, or who has been convicted of any
170 offense in another jurisdiction that would be considered a
171 felony if committed in this state, is not eligible for board
172 membership unless such felon's civil rights have been restored
173 for a period of no less than 5 years as of the date on which
174 such person seeks election to the board. The validity of an
175 action by the board is not affected if it is later determined
176 that a member of the board is ineligible for board membership
177 due to having been convicted of a felony.

178 2. The bylaws shall provide the method of calling meetings
179 of unit owners, including annual meetings. Written notice, which
180 notice must include an agenda, shall be mailed, hand delivered,
181 or electronically transmitted to each unit owner at least 14
182 days prior to the annual meeting and shall be posted in a
183 conspicuous place on the condominium property at least 14
184 continuous days preceding the annual meeting. Upon notice to the
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185 unit owners, the board shall by duly adopted rule designate a
186 specific location on the condominium property or association
187 property upon which all notices of unit owner meetings shall be
188 posted; however, if there is no condominium property or
189 association property upon which notices can be posted, this
190 requirement does not apply. In lieu of or in addition to the
191 physical posting of notice of any meeting of the unit owners on
192 the condominium property, the association may, by reasonable
193 rule, adopt a procedure for conspicuously posting and repeatedly
194 broadcasting the notice and the agenda on a closed-circuit cable
195 television system serving the condominium association. However,
196 if broadcast notice is used in lieu of a notice posted
197 physically on the condominium property, the notice and agenda
198 must be broadcast at least four times every broadcast hour of
199 each day that a posted notice is otherwise required under this
200 section. When broadcast notice is provided, the notice and
201 agenda must be broadcast in a manner and for a sufficient
202 continuous length of time so as to allow an average reader to
203 observe the notice and read and comprehend the entire content of
204 the notice and the agenda. Unless a unit owner waives in writing
205 the right to receive notice of the annual meeting, such notice
206 shall be hand delivered, mailed, or electronically transmitted
207 to each unit owner. Notice for meetings and notice for all other
208 purposes shall be mailed to each unit owner at the address last
209 furnished to the association by the unit owner, or hand
210 delivered to each unit owner. However, if a unit is owned by
211 more than one person, the association shall provide notice, for
212 meetings and all other purposes, to that one address which the
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213 developer initially identifies for that purpose and thereafter
214 as one or more of the owners of the unit shall so advise the
215 association in writing, or if no address is given or the owners
216 of the unit do not agree, to the address provided on the deed of
217 record. An officer of the association, or the manager or other
218 person providing notice of the association meeting, shall
219 provide an affidavit or United States Postal Service certificate
220 of mailing, to be included in the official records of the
221 association affirming that the notice was mailed or hand
222 delivered, in accordance with this provision.

223 3. The members of the board shall be elected by written
224 ballot or voting machine. Proxies shall in no event be used in
225 electing the board, either in general elections or elections to
226 fill vacancies caused by recall, resignation, or otherwise,
227 unless otherwise provided in this chapter. Not less than 60 days
228 before a scheduled election, the association shall mail,
229 deliver, or electronically transmit, whether by separate
230 association mailing or included in another association mailing,
231 delivery, or transmission, including regularly published
232 newsletters, to each unit owner entitled to a vote, a first
233 notice of the date of the election along with a certification
234 form provided by the division attesting that he or she has read
235 and understands, to the best of his or her ability, the
236 governing documents of the association and the provisions of
237 this chapter and any applicable rules. Any unit owner or other
238 eligible person desiring to be a candidate for the board must
239 give written notice to the association not less than 40 days
240 before a scheduled election. Together with the written notice

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241 and agenda as set forth in subparagraph 2., the association
242 shall mail, deliver, or electronically transmit a second notice
243 of the election to all unit owners entitled to vote therein,
244 together with a ballot which shall list all candidates. Upon
245 request of a candidate, the association shall include an
246 information sheet, no larger than 8 1/2 inches by 11 inches,
247 which must be furnished by the candidate not less than 35 days
248 before the election, along with the signed certification form
249 provided for in this subparagraph, to be included with the
250 mailing, delivery, or transmission of the ballot, with the costs
251 of mailing, delivery, or electronic transmission and copying to
252 be borne by the association. The association is not liable for
253 the contents of the information sheets prepared by the
254 candidates. In order to reduce costs, the association may print
255 or duplicate the information sheets on both sides of the paper.
256 The division shall by rule establish voting procedures
257 consistent with the provisions contained herein, including rules
258 establishing procedures for giving notice by electronic
259 transmission and rules providing for the secrecy of ballots.
260 Elections shall be decided by a plurality of those ballots cast.
261 There shall be no quorum requirement; however, at least 20
262 percent of the eligible voters must cast a ballot in order to
263 have a valid election of members of the board. No unit owner
264 shall permit any other person to vote his or her ballot, and any
265 such ballots improperly cast shall be deemed invalid, provided
266 any unit owner who violates this provision may be fined by the
267 association in accordance with s. 718.303. A unit owner who
268 needs assistance in casting the ballot for the reasons stated in
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269 s. 101.051 may obtain assistance in casting the ballot. The
270 regular election shall occur on the date of the annual meeting.
271 The provisions of this subparagraph shall not apply to timeshare
272 condominium associations. Notwithstanding the provisions of this
273 subparagraph, an election is not required unless more candidates
274 file notices of intent to run or are nominated than board
275 vacancies exist.

276 4. Any approval by unit owners called for by this chapter
277 or the applicable declaration or bylaws, including, but not
278 limited to, the approval requirement in s. 718.111(8), shall be
279 made at a duly noticed meeting of unit owners and shall be
280 subject to all requirements of this chapter or the applicable
281 condominium documents relating to unit owner decisionmaking,
282 except that unit owners may take action by written agreement,
283 without meetings, on matters for which action by written
284 agreement without meetings is expressly allowed by the
285 applicable bylaws or declaration or any statute that provides
286 for such action.

287 5. Unit owners may waive notice of specific meetings if
288 allowed by the applicable bylaws or declaration or any statute.
289 If authorized by the bylaws, notice of meetings of the board of
290 administration, unit owner meetings, except unit owner meetings
291 called to recall board members under paragraph (j), and
292 committee meetings may be given by electronic transmission to
293 unit owners who consent to receive notice by electronic
294 transmission.

295 6. Unit owners shall have the right to participate in
296 meetings of unit owners with reference to all designated agenda
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items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

7. Any unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

8. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of subparagraph 3. unless the association governs 10 units or less and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

9. Within 30 days after being elected to the board of directors, a new director shall certify in writing to the secretary of the association that he or she has read the association's declarations of covenants and restrictions, articles of incorporation, bylaws, and current written policies, that he or she will work to uphold such documents and policies to the best of his or her ability, and that he or she will faithfully discharge his or her fiduciary responsibility to the

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association's members. Failure to timely file the statement
automatically disqualifies the director from service on the
association's board of directors. The secretary shall cause the
association to retain a director's certification for inspection
by the members for 5 years after a director's election. Failure
to have such certification on file does not affect the validity
of any appropriate action.

Notwithstanding subparagraphs (b)2. and (d)3., an association of
10 or fewer units may, by the affirmative vote of a majority of
the total voting interests, provide for different voting and
election procedures in its bylaws, which vote may be by a proxy
specifically delineating the different voting and election
procedures. The different voting and election procedures may
provide for elections to be conducted by limited or general
proxy.

(h) Amendment of bylaws.--

1. The method by which the bylaws may be amended
consistent with the provisions of this chapter shall be stated.
If the bylaws fail to provide a method of amendment, the bylaws
may be amended if the amendment is approved by the owners of not
less than two-thirds of the voting interests.

2. No bylaw shall be revised or amended by reference to
its title or number only. Proposals to amend existing bylaws
shall contain the full text of the bylaws to be amended; new
words shall be inserted in the text underlined, and words to be
deleted shall be lined through with hyphens. However, if the
proposed change is so extensive that this procedure would

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hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of bylaw. See bylaw _____ for present text."

3. Nonmaterial errors or omissions in the bylaw process will not invalidate an otherwise properly promulgated amendment.

4. If the bylaws provide for amendment by the board of administration, no bylaw may be amended unless it is heard and noticed at two consecutive meetings of the board of administration that are at least 1 week apart.

Section 3. Subsection (11) is added to section 718.116, Florida Statutes, to read:

718.116 Assessments; liability; lien and priority; interest; collection.--

(11) During the pendency of any foreclosure action of a condominium unit, if the unit is occupied by a tenant and the unit owner is delinquent in the payment of regular assessments, the association may demand that the tenant pay to the association the future regular assessments related to the condominium unit. The demand shall be continuing in nature, and upon demand the tenant shall continue to pay the regular assessments to the association until the association releases the tenant or the tenant discontinues tenancy in the unit. The association shall mail written notice to the unit owner of the association's demand that the tenant pay regular assessments to the association. The tenant shall not be liable for increases in

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381 the amount of the regular assessment due unless the tenant was
382 reasonably notified of the increase prior to the day that the
383 rent is due. The tenant shall be given a credit against rents
384 due to the unit owner in the amount of assessments paid to the
385 association. The association shall, upon request, provide the
386 tenant with written receipts for payments made. The association
387 may issue notices under s. 83.56 and may sue for eviction under
388 ss. 83.59-83.625 as if the association were a landlord under
389 part II of chapter 83 should the tenant fail to pay an
390 assessment. However, the association shall not otherwise be
391 considered a landlord under chapter 83 and shall specifically
392 not have any duty under s. 83.51. The tenant shall not, by
393 virtue of payment of assessments, have any of the rights of a
394 unit owner to vote in any election or to examine the books and
395 records of the association. A court may supersede the effect of
396 this subsection by appointing a receiver.

397 Section 4. Subsection (1) of section 718.501, Florida
398 Statutes, is amended to read:

399 718.501 Authority, responsibility, and duties of Division
400 of Florida Condominiums, Timeshares, and Mobile Homes.--

401 (1) The Division of Florida Condominiums, Timeshares, and
402 Mobile Homes of the Department of Business and Professional
403 Regulation, referred to as the "division" in this part, has the
404 power to enforce and ensure compliance with the provisions of
405 this chapter and rules relating to the development,
406 construction, sale, lease, ownership, operation, and management
407 of residential condominium units. In performing its duties, the
408 division has complete jurisdiction to investigate complaints and
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enforce compliance with the provisions of this chapter with respect to associations that are still under developer control and complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division shall only have jurisdiction to investigate complaints related to financial issues, failure to maintain common elements, elections, and unit owner access to association records pursuant to s. 718.111(12).

(a)1. The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms hereunder.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee

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designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, association, officer, or member of the board of administration, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, association, developer-designated officer, or developer-designated member of the board of administration,

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465 developer-designated assignees or agents, community association
466 manager, or community association management firm to cease and
467 desist from the unlawful practice and take such affirmative
468 action as in the judgment of the division will carry out the
469 purposes of this chapter. If the division finds that a
470 developer, association, officer, or member of the board of
471 administration, or its assignees or agents, is violating or is
472 about to violate any provision of this chapter, any rule adopted
473 or order issued by the division, or any written agreement
474 entered into with the division, and presents an immediate danger
475 to the public requiring an immediate final order, it may issue
476 an emergency cease and desist order reciting with particularity
477 the facts underlying such findings. The emergency cease and
478 desist order is effective for 90 days. If the division begins
479 nonemergency cease and desist proceedings, the emergency cease
480 and desist order remains effective until the conclusion of the
481 proceedings under ss. 120.569 and 120.57.

482 3. If a developer fails to pay any restitution determined
483 by the division to be owed, plus any accrued interest at the
484 highest rate permitted by law, within 30 days after expiration
485 of any appellate time period of a final order requiring payment
486 of restitution or the conclusion of any appeal thereof,
487 whichever is later, the division shall bring an action in
488 circuit or county court on behalf of any association, class of
489 unit owners, lessees, or purchasers for restitution, declaratory
490 relief, injunctive relief, or any other available remedy. The
491 division may also temporarily revoke its acceptance of the

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filing for the developer to which the restitution relates until
payment of restitution is made.

4. The division may petition the court for the appointment
of a receiver or conservator. If appointed, the receiver or
conservator may take action to implement the court order to
ensure the performance of the order and to remedy any breach
thereof. In addition to all other means provided by law for the
enforcement of an injunction or temporary restraining order, the
circuit court may impound or sequester the property of a party
defendant, including books, papers, documents, and related
records, and allow the examination and use of the property by
the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an
order of restitution whereby the defendant in an action brought
pursuant to subparagraph 4. shall be ordered to make restitution
of those sums shown by the division to have been obtained by the
defendant in violation of this chapter. Such restitution shall,
at the option of the court, be payable to the conservator or
receiver appointed pursuant to subparagraph 4. or directly to
the persons whose funds or assets were obtained in violation of
this chapter.

6. The division may impose a civil penalty against a
developer or association, or its assignee or agent, for any
violation of this chapter or a rule adopted under this chapter.
The division may impose a civil penalty individually against any
officer or board member who willfully and knowingly violates a
provision of this chapter, adopted rule, or a final order of the
division; may order the removal of such individual as an officer

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520 or from the board of administration or as an officer of the
521 association; and may prohibit such individual from serving as an
522 officer or on the board of a community association for a period
523 of time. The term "willfully and knowingly" means that the
524 division informed the officer or board member that his or her
525 action or intended action violates this chapter, a rule adopted
526 under this chapter, or a final order of the division and that
527 the officer or board member refused to comply with the
528 requirements of this chapter, a rule adopted under this chapter,
529 or a final order of the division. The division, prior to
530 initiating formal agency action under chapter 120, shall afford
531 the officer or board member an opportunity to voluntarily comply
532 with this chapter, a rule adopted under this chapter, or a final
533 order of the division. An officer or board member who complies
534 within 10 days is not subject to a civil penalty. A penalty may
535 be imposed on the basis of each day of continuing violation, but
536 in no event shall the penalty for any offense exceed \$5,000. By
537 January 1, 1998, the division shall adopt, by rule, penalty
538 guidelines applicable to possible violations or to categories of
539 violations of this chapter or rules adopted by the division. The
540 guidelines must specify a meaningful range of civil penalties
541 for each such violation of the statute and rules and must be
542 based upon the harm caused by the violation, the repetition of
543 the violation, and upon such other factors deemed relevant by
544 the division. For example, the division may consider whether the
545 violations were committed by a developer or owner-controlled
546 association, the size of the association, and other factors. The
547 guidelines must designate the possible mitigating or aggravating

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548 circumstances that justify a departure from the range of
549 penalties provided by the rules. It is the legislative intent
550 that minor violations be distinguished from those which endanger
551 the health, safety, or welfare of the condominium residents or
552 other persons and that such guidelines provide reasonable and
553 meaningful notice to the public of likely penalties that may be
554 imposed for proscribed conduct. This subsection does not limit
555 the ability of the division to informally dispose of
556 administrative actions or complaints by stipulation, agreed
557 settlement, or consent order. All amounts collected shall be
558 deposited with the Chief Financial Officer to the credit of the
559 Division of Florida Condominiums, Timeshares, and Mobile Homes
560 Trust Fund. If a developer fails to pay the civil penalty and
561 the amount deemed to be owed to the association, the division
562 shall issue an order directing that such developer cease and
563 desist from further operation until such time as the civil
564 penalty is paid or may pursue enforcement of the penalty in a
565 court of competent jurisdiction. If an association fails to pay
566 the civil penalty, the division shall pursue enforcement in a
567 court of competent jurisdiction, and the order imposing the
568 civil penalty or the cease and desist order will not become
569 effective until 20 days after the date of such order. Any action
570 commenced by the division shall be brought in the county in
571 which the division has its executive offices or in the county
572 where the violation occurred.

573 7. If a unit owner presents the division with proof that
574 the unit owner has requested access to official records in
575 writing by certified mail, and that after 10 days the unit owner
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again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records where the records are kept pursuant to s. 718.112.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under paragraph (r). The civil penalty shall be at least \$500 but no more than \$5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney's fees and, if the division prevails, may also award reasonable costs of investigation.

9. Notwithstanding subparagraph 6., when the division finds that an officer or director has intentionally falsified association records with the intent to conceal material facts from the division, the board, or unit owners, the division shall prohibit the officer or director from acting as an officer or director of any condominium, cooperative, or homeowners' association for at least 1 year.

10. When the division finds that any person has derived an improper personal benefit from a condominium association, the division shall order the person to pay restitution to the association and shall order the person to pay to the division the costs of investigation and prosecution.

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603 (e) The division may prepare and disseminate a prospectus
604 and other information to assist prospective owners, purchasers,
605 lessees, and developers of residential condominiums in assessing
606 the rights, privileges, and duties pertaining thereto.

607 (f) The division has authority to adopt rules pursuant to
608 ss. 120.536(1) and 120.54 to implement and enforce the
609 provisions of this chapter.

610 (g) The division shall establish procedures for providing
611 notice to an association and the developer during the period
612 where the developer controls the association when the division
613 is considering the issuance of a declaratory statement with
614 respect to the declaration of condominium or any related
615 document governing in such condominium community.

616 (h) The division shall furnish each association which pays
617 the fees required by paragraph (2)(a) a copy of this act,
618 subsequent changes to this act on an annual basis, an amended
619 version of this act as it becomes available from the Secretary
620 of State's office on a biennial basis, and the rules adopted
621 thereto on an annual basis.

622 (i) The division shall annually provide each association
623 with a summary of declaratory statements and formal legal
624 opinions relating to the operations of condominiums which were
625 rendered by the division during the previous year.

626 (j) The division shall provide training and educational
627 programs for condominium association board members and unit
628 owners. The training may, in the division's discretion, include
629 web-based electronic media, and live training and seminars in
630 various locations throughout the state. The division shall have

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the authority to review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and shall make such list available to board members and unit owners in a reasonable and cost-effective manner.

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in arbitration proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which factors must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements imposed by rules adopted by the division.

(m) When a complaint is made, the division shall conduct its inquiry with due regard to the interests of the affected parties. Within 30 days after receipt of a complaint, the

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659 division shall acknowledge the complaint in writing and notify
660 the complainant whether the complaint is within the jurisdiction
661 of the division and whether additional information is needed by
662 the division from the complainant. The division shall conduct
663 its investigation and shall, within 90 days after receipt of the
664 original complaint or of timely requested additional
665 information, take action upon the complaint. However, the
666 failure to complete the investigation within 90 days does not
667 prevent the division from continuing the investigation,
668 accepting or considering evidence obtained or received after 90
669 days, or taking administrative action if reasonable cause exists
670 to believe that a violation of this chapter or a rule of the
671 division has occurred. If an investigation is not completed
672 within the time limits established in this paragraph, the
673 division shall, on a monthly basis, notify the complainant in
674 writing of the status of the investigation. When reporting its
675 action to the complainant, the division shall inform the
676 complainant of any right to a hearing pursuant to ss. 120.569
677 and 120.57.

678 (n) Condominium association directors, officers, and
679 employees; condominium developers; community association
680 managers; and community association management firms have an
681 ongoing duty to reasonably cooperate with the division in any
682 investigation pursuant to this section. The division shall refer
683 to local law enforcement authorities any person whom the
684 division believes has altered, destroyed, concealed, or removed
685 any record, document, or thing required to be kept or maintained

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by this chapter with the purpose to impair its verity or
availability in the department's investigation.

(o) The division may:

1. Contract with agencies in this state or other
jurisdictions to perform investigative functions; or

2. Accept grants-in-aid from any source.

(p) The division shall cooperate with similar agencies in
other jurisdictions to establish uniform filing procedures and
forms, public offering statements, advertising standards, and
rules and common administrative practices.

(q) The division shall consider notice to a developer to
be complete when it is delivered to the developer's address
currently on file with the division.

(r) In addition to its enforcement authority, the division
may issue a notice to show cause, which shall provide for a
hearing, upon written request, in accordance with chapter 120.

(s) The division shall submit to the Governor, the
President of the Senate, the Speaker of the House of
Representatives, and the chairs of the legislative
appropriations committees an annual report that includes, but
need not be limited to, the number of training programs provided
for condominium association board members and unit owners, the
number of complaints received by type, the number and percent of
complaints acknowledged in writing within 30 days and the number
and percent of investigations acted upon within 90 days in
accordance with paragraph (m), and the number of investigations
exceeding the 90-day requirement. The annual report shall also
include an evaluation of the division's core business processes

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and make recommendations for improvements, including statutory changes. The report shall be submitted by September 30 following the end of the fiscal year.

T I T L E A M E N D M E N T

Remove lines 3-19 and insert:

718.111, F.S.; providing that an association has power to borrow money; requiring two-thirds vote of members to borrow money above a certain threshold; requiring certain notice of meeting; requiring that association access to a unit must be by two persons, one of whom must be a board member or manager or employee of the association; providing an exception for emergencies; amending s. 718.112, F.S.; revising notice requirements for board of administration meetings; requiring each newly elected director to certify to the secretary of the association that he or she has read the association's declarations of covenants and restrictions, articles of incorporation, bylaws, and current written policies and will work to uphold such documents and policies to the best of his or her ability; providing that a failure to timely file the statement automatically disqualifies the director from service on the association's board of directors; requiring the secretary of the association to retain a director's certification for inspection by the members for a specified period of years after a director's election; providing requirements for bylaw amendments by a board of administration; amending s.

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HOUSE AMENDMENT
Bill No. CS/CS/CS/HB 27

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718.116, F.S.; authorizing association demands for
assessment payments from tenants of delinquent owners
during pendency of a foreclosure action of a condominium
unit; providing for notice; providing for credits against
rent for assessment payments by tenants; providing for
eviction proceedings for nonpayment; providing for effect
of provisions on rights and duties of the tenant and
association; amending s. 718.501, F.S.; providing for
division jurisdiction to investigate complaints concerning
failure to maintain common elements; prohibiting an officer
or director from acting as such for a specified period
after having been found to have committed specified
violations; providing for payment of restitution and costs
of investigation and prosecution in certain circumstances;

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