

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 653 Community Associations

SPONSOR(S): Civil Justice & Claims Subcommittee; Careers & Competition Subcommittee; Moraitis, Jr.

TIED BILLS: None **IDEN./SIM. BILLS:** SB 744

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	8 Y, 5 N, As CS	Brackett	Anstead
2) Civil Justice & Claims Subcommittee	10 Y, 4 N, As CS	Stranburg	Bond
3) Commerce Committee			

SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes (Division), located within the Department of Business and Professional Regulation (Department), has regulatory authority over condominium associations and cooperative associations. The division has limited responsibilities regarding homeowner's associations (limited to arbitration of election and recall disputes). The bill:

- Removes the future repeal of condominium bulk buyer provisions.
- Removes the option that condominium, cooperative, and homeowners' associations operating fewer than 50 units may prepare cash receipt reports in lieu of financial statements; and repeals the limitation that cooperative and condominium associations may not waive financial reporting for more than three consecutive years, thereby allowing unlimited waiver.
- Extends from 5 to 10 business days the time in which a condominium or cooperative must respond to a unit owners' request to inspect records; shortens retention periods for certain documents; and allows notice of board meetings by website.
- Provides a complete exemption from retrofitting with a fire sprinkler system or engineered lifesafety system for a condominium or cooperative building under 75 feet tall without a vote. The current requirement to retrofit a building over 75 feet tall, unless the unit owners waive the requirement by a majority vote, is extended 2 years. The unit owners of a building over 75 feet tall may waive the requirement for an engineered life safety system. Electronic voting to forgo retrofitting is authorized. Certain notices regarding a waiver of retrofitting are repealed. The requirement to wait 3 years between votes to require retrofitting is repealed.
- Requires cooperatives to retain electronic records related to voting as official records.
- Amends HOA reserve funds to require reserves for all items with deferred maintenance costs over \$100,000 and restricts use of reserve funds to only authorized reserve expenditures.
- Amends HOA annual budget requirements to mirror the requirements of condominiums.
- Requires that a vote authorizing an alteration or addition to a condominium must be held prior to beginning of the work.
- Amends cooperative law to match condominium law regarding removal of board members who are 90 days or more delinquent on payments and restricting co-owners from serving on the board of directors.
- Allows HOAs to provide electronic notice to any member who has provided a fax number or email address for purposes of receiving notice.
- Amends authorized cooperative common expenses to include communication and information services in bulk contracts, as is currently authorized in condominiums.

The bill appropriates \$85,006 in recurring funds and \$4,046 in nonrecurring funds (1 FTE) from the Division of Florida Condominiums, Timeshares and Mobile Homes Trust Fund in FY 2017-18. The bill does not appear to have a fiscal impact on local governments.

The effective date of the bill is July 1, 2017.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0653c.CJC

DATE: 3/30/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Division of Condominiums, Timeshares and Mobile Homes (the division), a division within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (limited to arbitration of election and recall disputes).

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common facilities.¹ A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.² A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners, which operates or maintains real property in which unit owners have use rights. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The association enacts condominium association bylaws, which govern the administration of the association, including quorum, voting rights, and election and removal of board members.

A cooperative is a form of property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.³ The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical.

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.⁴ Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA includes the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents. No state agency has direct oversight of HOAs. Florida law provides procedures and minimum requirements for operating and provides for a mandatory binding arbitration program, administered by the Division only for certain election disputes.

¹ s. 718.103(11), F.S.

² s. 718.104(2), F.S.

³ s. 719.103(2)(26), F.S.

⁴ s. 720.301(9), F.S.

Official Records – Current Situation

Condominium and cooperative associations are required to maintain official records for at least 7 years. The official records must include:

- A copy of the articles of incorporation, declaration, bylaws of and rules of the association;
- Meeting minutes;
- A roster of all unit owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;
- A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
- Accounting records for the association;
- All contracts for work to be performed including bids;
- All other written records which are related to the operation of the association; and
- All ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners.⁵

Cooperatives are required to maintain all contracts for work to be performed including bids for a period of one year whereas condominiums are required to maintain them for at least seven years.⁶

Unit owners are able to inspect the official records, and a condominium or cooperative must have the records available for inspection within 5 working days of receiving a request to inspect them.⁷

Official Records – Effect of the Bill

The bill:

- Extends the deadline condominiums and cooperatives have to make records available to unit owners from 5 working days to 10 working days.
- Decreases the amount of time a condominium must maintain bids for contracts for work to be performed from a period of seven years to a period of one year.
- Includes electronic records relating to voting to the list of official records that must be kept by the cooperative or condominium association.

Financial Reporting – Current Situation

A condominium, cooperative, and HOA (collectively associations) must complete an annual financial report, and provide each member a copy of the financial report or notice that a copy of the financial report is available upon request.⁸ The type of financial report required by an association is determined by the total annual revenues of the association.

- An association with total annual revenues of less than \$150,000 must prepare a report of cash receipts and expenditures.
- An association with total annual revenues of at least \$150,000 but less than \$300,000 must prepare compiled financial statements.
- An association with total annual revenues of at least \$300,000 but less than \$500,000 must prepare reviewed financial statements.
- An association with total annual revenues of \$500,000 or more must prepare audited financial statements.⁹

⁵ s. 718.111(12)(a), F.S. and s. 719.104(2), F.S.

⁶ *Id.*

⁷ *Id.*

⁸ ss. 718.111(13), 719.104(4), & 720.303(7), F.S.

⁹ *Id.*

An association that operates fewer than 50 units may prepare a report of cash receipts and expenditures in lieu of financial reports regardless of total annual revenues.¹⁰

A condominium or cooperative may annually vote to waive the financial report and prepare a report of cash receipts and expenditures, but it may not waive the financial report requirement for more than three consecutive years.¹¹ Industry experts have interpreted waiving a financial report to mean preparing a report of cash receipts and expenditures in lieu of the financial report.¹²

Financial Reporting – Effect of the Bill

The bill removes the option that an association operating fewer than 50 units may prepare cash receipt reports in lieu of financial statements regardless of total annual revenues.

The bill removes the limitation on cooperatives and condominiums that prohibited waiving financial reporting for more than three consecutive years, thus allowing condominiums and cooperatives to waive financial reporting indefinitely (if approved annually by a vote of the membership).

Notice of Board Meetings – Current Situation

Associations are required to notice all board meetings by posting notice in a conspicuous place on the association's property for at least 48 hours. Notice must be posted 14 days before meetings where a nonemergency special assessment or an amendment to the rules regarding unit use is considered.¹³

If a parcel owner in an HOA provides written consent the HOA may provide the parcel owner notice by electronic transmission for board meetings, committee meetings, annual meetings, and special meetings.¹⁴

Notice of Board Meetings – Effect of the Bill

The bill allows condominiums and cooperatives to adopt rules for noticing all board meetings on a website if the time requirements for physically posting the board meetings are met. Any rule adopted for website notice must also include a requirement that the cooperative or condominium send an electronic notice to unit owners providing a hyperlink to the website where the notice is posted. Notice by website must be in addition to the other notice requirements.

The bill allows an HOA to give notice by electronic transmission to any parcel owner who provided written consent and a fax number or email address to the HOA.

Communication by Board Members for Cooperatives and HOAs – Current Situation and Effect of the Bill

It is not clear if board members for cooperatives and HOAs may use email as a form of communication. Board members for condominiums may use email as a form of communication.¹⁵

The bill allows members of the board of directors for cooperatives and HOAs to use email as a form of communication. However, a board member may not cast a vote via email.

¹⁰ *Id.*

¹¹ ss. 718.111(13) & 719.104(4), F.S.

¹² See Peter M. Dunbar, *The Complete Condominium*, 169 (13th ed. 2012-13).

¹³ ss. 718.112(2)(c), 720.303(2)(c), & 719.106(1)(c)(1), F.S.

¹⁴ s. 720.303(2)(c), F.S.

¹⁵ s. 718.112(2)(c), F.S.

Cooperative Board of Directors Members – Current Situation and Effect of the Bill

Current law provides a set of mandatory provisions for the bylaws of a condominium or cooperative.¹⁶ In condominiums, co-owners of units cannot serve as members of the board of directors for an association unless they own more than one unit or there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancies.¹⁷ The statutory standard bylaws for a condominium also provides that a director or officer more than 90 days delinquent in the payment of any monetary obligation due to the association is deemed to have abandoned the office, creating a vacancy on the board to be filled as appropriately.¹⁸

The bill amends cooperative law to mirror condominium law by inserting these two provisions into the statutory standard bylaws for cooperatives.

Cooperative Common Expenses and Bulk Contracts – Current Situation and Effect of the Bill

Common expenses are normal costs incurred by a cooperative and include:

- Costs for the operation, maintenance, repair, or replacement of cooperative property;
- Costs of carrying out the powers and duties of the cooperative; or
- Costs designated by the cooperative as a common expense.¹⁹

Common expenses are paid by the unit owners of a cooperative and are included in a cooperative's annual budget to its members.²⁰

Cooperatives may provide in their bylaws that bulk contracts for the cost of a master antenna television system or franchised cable television service are common expenses. Unlike condominiums, cooperatives may not provide bulk contracts for the cost of communication services defined in ch. 202, F.S., information services, or internet services as common expenses.²¹

Ch. 202, F.S., defines communication services to mean the transmission, conveyance, or routing of:

- voice, data, audio, video; or
- any other information or signals, including:
 - video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave; or
 - other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.
- The term also includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added.

Examples of communication services include:

- Cable and satellite television
- Video and music streaming
- Telephones
- Mobile communications, and similar services²²

¹⁶ ss. 718.112 & 719.106, F.S.

¹⁷ s. 718.112(2)(d)2, F.S.

¹⁸ s. 718.112(2)(n)

¹⁹ ss. 719.103(9), & 719.107, F.S.

²⁰ s. 719.103(1), & 719.106(1)(j), F.S.

²¹ ss. 719.107, & 718.115(1)(d), F.S.

²² Florida Department of Revenue, *Florida Communications Services Tax*, <http://floridarevenue.com/taxes/taxesfees/Pages/cst.aspx> (last visited on March 30, 2017).

Information service is defined as the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using or making available information via communications services.²³ The term also includes data processing and other services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information. The term does not include video service.

The bill amends cooperative law to mirror condominium law by providing that bulk contracts for communication services defined in ch. 202, F.S., internet services, and information services may be considered a common expense.

Cooperatives' Board of Directors and Board Members – Current Situation and Effect of the Bill

Cooperatives are administered by a board of directors whose members are elected. The board consists of unit owners who have been elected to serve on the board. Directors of the board nominate officers, including president, secretary, and treasurer. The officers are responsible for the duties that are customarily performed by their counterparts in corporations.²⁴

Unlike condominiums, cooperatives do not have a provision that a director or officer is deemed to have abandoned their post if the officer or director is more than 90 days delinquent in the payment of any monetary obligation to the association.²⁵

Additionally, cooperatives do not have a provision that prevents co-owners of a unit in residential condominiums that are more than 10 units from serving on the board at the same time unless the co-owners own more than one unit or there are not enough eligible candidates to fill vacancies on the board.²⁶

The bill amends cooperative law to mirror condominium law by providing that:

- A director or officer is deemed to have abandoned their office if the officer or director is more than 90 days delinquent in the payment of any monetary obligation to the association; and
- In residential cooperatives that are more than 10 units, co-owners of a unit may not serve as members on the board at the same time unless the co-owners own more than one unit or there are not enough eligible candidates to fill vacancies on the board.

Engineered Life Safety System and Fire Sprinkler Retrofitting – Current Situation

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer (CFO) as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire. Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.²⁷

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the

²³ s. 202.11(5), F.S.

²⁴ s. 719.106(1), F.S.

²⁵ s. 718.112(2), F.S.

²⁶ *Id.*

²⁷ s. 633.104, F.S.

enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C. The State Fire Marshal adopts a new edition of the FFPC every three years. The FFPC includes national fire safety and life safety standards set forth by the National Fire Protection Association (NFPA), including the NFPA's Fire Code (1), Life Safety Code (101) and Guide on Alternative Approaches to Life Safety (101A).²⁸

The state fire prevention codes and standards required existing multi-family buildings 75 feet or taller, including condominiums and cooperatives, to be retrofitted with fire sprinkler systems. Alternatively, a condominium or cooperative may utilize an engineered life safety system in lieu of sprinklers. All condominiums and cooperatives built since 1994 that are 3 stories or more have sprinkler systems and thus are in compliance. The deadline for retrofitting of condominiums and cooperatives has been extended by previous acts.

The Florida Fire Prevention Code allows an engineered lifesafety system (ELSS) as an alternative to a sprinkler system, and defines an ELSS as a system that consists of a combination of:

- partial automatic sprinkler protection;
- smoke detection alarms;
- smoke control; and
- compartmentation or other approved systems.²⁹

DBPR has estimated that retrofitting a condominium with sprinklers would cost from \$595 to \$8,633 per unit. The costs vary depending on a number of factors such as the extent of sprinkler coverage in the building, the age of the building, the size and number of the units, and type of construction.³⁰

In 2003, the Legislature amended the requirement to retrofit a residential condominium or cooperative building by providing that:

- Unit owners in residential condominiums and cooperatives may vote to forego retrofitting a building with a fire sprinkler system or engineered life safety system (ELSS). A vote to forego retrofitting required a two-thirds vote of all voting interests in the affected condominium or cooperative.
- Local governments may not require retrofitting with a fire sprinkler system before the end of 2014.
- However, residential condominiums and cooperatives could not vote to forego retrofitting a sprinkler system in any "common area" of a "high rise" building.
 - The common area of a high rise building includes any enclosed hallway, corridor, lobby, stairwell, or entryway
 - A high-rise building is defined as a building greater than 75 feet in height. The building height is measured from the lowest level of fire department access to the floor of the highest occupiable story.³¹

Residential condominiums consist of two or more units, any of which are intended for use as a private temporary or permanent residence. A condominium that contains commercial and residential units is a mixed-use condominium.³² Residential cooperatives consist of units which are intended for use as a private residence. If a cooperative has commercial and residential units then the cooperative is a residential cooperative with respect to those units intended for use as a private residence.³³

In 2010, the Legislature again amended the law regarding retrofitting by:

- Providing that unit owners may vote to forego retrofitting a sprinkler system in common areas of a high rise building.

²⁸ s. 633.202(2), F.S.

²⁹ 101:A.31.3.5.11.3 and 101: 31.3.5.11.3 Florida Fire Prevention Code 5th edition 2012

³⁰ Condominium Sprinkler Retrofit Report, October 2009.

³¹ ss. 718.112(2)(l) & 719.1055(5) (2003), F.S.

³² s. 718.103(23), F.S.

³³ s. 719.103(22), F.S.

- Reducing the voting requirement to forego retrofitting a sprinkler system from a two-thirds vote to a majority vote.
- Prohibiting local government from requiring retrofitting before the end of 2019.³⁴

However, the Legislature also removed the ability of a residential condominium or cooperative to vote to forego retrofitting a building with an ELSS.³⁵

Currently the law provides that:

- An association, condominium, or unit owner is not required to retrofit common elements, association property, or units of a residential condominium to meet current codes in a building that has been certified for occupancy by the applicable government entity if the unit owners vote to forego retrofitting by majority vote.
- Local governments may not require retrofitting with a fire sprinkler system before the end of 2019.
- Current law only applies to fire sprinkler systems. There is currently no statutory authority for condominiums or cooperatives to forego retrofitting a building with an ELSS.
- Current law only applies to residential condominiums. Nonresidential condominiums may not forego a requirement to install sprinklers.
- The ability to forego retrofitting is notwithstanding the provisions of ch. 633, F.S., or any other code, statute, ordinance, administrative rule, or regulation.

The vote to forego retrofitting does not apply to any public lodging establishment buildings, including transient public lodging establishments, that are more than three stories or over 75 feet and that advertise more than 50% of units as being available to rent by guests.³⁶

Engineered Life Safety System and Fire Sprinkler Retrofitting – Effect of the Bill

The bill:

- Provides that a condominium or cooperative may also vote to forego retrofitting of an ELSS as well as a fire sprinkler system.
- Clarifies that a condominiums or cooperatives that are 75 feet or less, even if also qualifying as a public lodging establishment in accordance with ss. 509.215 and 553.895(1), F.S., do not have to retrofit a building with a fire sprinkler system or an ELSS or vote to forego retrofitting.
- Allows all condominiums or cooperatives that are 75 feet or more to vote to waive retrofitting requirements.
- Prohibits a local authority from requiring retrofitting of a fire sprinkler system or ELSS until on or after January 1, 2022.
- Extends the time an association has to apply for a building permit, if it has not completed retrofitting or voted to forego retrofitting, from December 31, 2019, to December 31, 2021.

Vote to Forego Retrofitting – Current Situation

A vote to forego retrofitting may be obtained by limited proxy, a personally cast ballot at a membership meeting, or by execution of a written consent by the member. The association's vote to forego retrofitting is effective upon recording a certificate attesting to such vote in the public records for the county of the condominium or cooperative.³⁷

³⁴ ss. 718.112(2)(l), 719.1055(5), F.S.

³⁵ *Id.*

³⁶ ss. 509.215 & 553.895(1), F.S. “Transient public lodging establishment” means any 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.

³⁷ ss. 718.112(2)(l), & 719.1055(5), F.S.

The cooperative or condominium must mail or hand deliver each unit owner written notice of the vote. After the vote to forego, notice of the results must be mailed or hand delivered to all unit owners. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing, and by a unit owner to a renter before signing a lease.³⁸

If there has been a previous vote to forego retrofitting then a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of least 10 percent of the voting interests. Such vote may be called once every 3 years. Electronic transmission may not be used to provide notice of the special meeting.³⁹

DBPR must require condominiums and cooperatives to report the membership vote and recording of a certificate and, if retrofitting has been undertaken, the per-unit cost of such work. DBPR must annually report to the Division of State Fire Marshal of the Department of Financial Services the number of associations that have elected to forego retrofitting.

Vote to Forego Retrofitting – Effect of the Bill

The bill:

- Adds electronic voting as a means to vote to forego retrofitting.
- Removes the requirement that notice of a vote to forego and such results be hand delivered or mailed and instead requires that a notice of a vote to forego shall be delivered or mailed to each unit owner.
- Clarifies that failure to timely notice unit owners of the results of a vote to forego does not invalidate the results of the vote as long as notice of the results is provided to the unit owners.
- Provides that a majority of the board of directors may hold a special owners meeting to vote to retrofit if there has already been a vote to forego retrofitting.
- Removes the provision that electronic transmission notice may not be used to notice the special meeting.
- Repeals the requirement that a vote to require retrofitting may only be called once every three years if there has already been a previous vote to forego retrofitting.
- Provides that failure to notify DBPR of a vote to forego and record the certificate will not affect the validity of the vote to forego.
- Provides that timeshare condominiums are subject to the firesafety standards found in s. 721.24, F.S., not the provisions of ch. 718, F.S.

Firesafety Signs on Buildings – Current Situation

In 2008, the Legislature passed the Aldridge/Benge Firefighter Safety Act. The Firefighter Safety Act required any building constructed of light-frame truss-type material to be marked by a sign on the outside of the building.⁴⁰ These signs served to warn emergency personnel of the construction material of the building when entering, as truss-type construction tends to suffer structural collapses during fires. The Firefighter Safety Act requires the State Fire Marshal to create rules regarding the color, size, and placement of these signs on all buildings with light-frame truss-type construction.⁴¹ The State Fire Marshal and local fire officials are responsible for the enforcement of these rules.⁴² Owners who do not follow these rules are subject to penalties pursuant to the state fire safety and prevention code.⁴³

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ s. 633.222(1), F.S.

⁴¹ s. 633.222(2), F.S.

⁴² s. 633.222(3), F.S.

⁴³ *Id.*, citing to s. 633.228, F.S.

Firesafety Signs on Buildings – Effect of the Bill

The bill requires the board of a condominium or cooperative building that has not installed a sprinkler system in the common areas to post a sign on the outside of the building to warn persons conducting fire control and other emergency operations that there is not a sprinkler system in the building. The bill requires the State Fire Marshal to promulgate rules regarding the size and color of the sign, the time period within which a sign must be posted, and the location of the sign. The State Fire Marshal and local fire officials are in charge of enforcement of the law and rules. Boards who fail to comply with the requirements are subject to penalties pursuant to the state fire safety and prevention code.

Bulk Assignees and Bulk Buyer – Current Situation

In 2010, the Legislature passed the Distressed Condominium Relief Act (Act) in order to relieve developers, lenders, unit owners, and condominium associations from certain provisions of the Florida Condominium Act. The Act was intended to relieve specific parties from certain liabilities so as to enable economic opportunities for successor purchasers of distressed condominiums.

Specifically, the Act created categories of "bulk buyers" and "bulk assignees." A bulk assignee is a person who acquires more than seven condominium parcels as provided in s. 718.703, F.S., and receives an assignment of some or all of the rights of the developer under specified recording documents. Similarly, a bulk buyer is a person who acquires more than seven condominium parcels, but who does not receive an assignment of developer rights other than the right to: conduct sales, leasing, and marketing activities within the condominium; be exempt from payment of working capital contributions; and be exempt from rights of first refusal.⁴⁴

Because the Act was created in reaction to the "massive downturn in the condominium market which has occurred throughout the state," it was not intended to be open-ended. Rather, the intent of the Legislature was to enact the relief only for a specific and defined period:⁴⁵

“The Legislature further finds and declares that this situation cannot be open-ended without potentially prejudicing the rights of unit owners and condominium associations, and thereby declares that the provisions of this part may be used by purchasers of condominium inventory for only a specific and defined period.”

Originally, the time limitation for classification as a bulk assignee or bulk buyer was until July 1, 2012.⁴⁶ In 2012, the Legislature extended the time limitation to July 1, 2015.⁴⁷ In 2014, the legislature again amended s. 718.707, F.S., to extend to July 1, 2016.

Finally, in 2015, the legislature again amended s. 718.707, F.S., to provide that a person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the parcels were acquired between July 1, 2010, and July 1, 2018.

Bulk Assignees and Bulk Buyer – Effect of the Bill

The bill removes the time limit on acquisition for classification as a bulk buyer, extending the applicability of the bulk buyer provisions indefinitely.

⁴⁴ s. 718.703, F.S.

⁴⁵ s. 718.702, F.S.

⁴⁶ Chapter 2010-174, L.O.F.

⁴⁷ Chapter 2012-61, L.O.F.

Termination of a Condominium – Current Situation

Section 718.117, F.S., governs the process for terminating a condominium association. The section begins with legislative findings regarding the purpose of termination of condominium. These findings provide that there should be a statutory method to terminate condominiums to preserve the value of the property and rights of alienation of the owners.⁴⁸ The findings also provide that it is against public policy in the state to require condominium operations to continue when to do so constitutes economic waste or is made impossible by law or regulation.⁴⁹ These findings apply to all condominiums in the state in existence on or after July 1, 2007.⁵⁰

There are two primary grounds for termination, each governed by its own requirements. First, a condominium may be terminated where there is economic waste or impossibility.⁵¹ A condominium may be terminated for "economic waste" if the total cost of construction or repairs necessary to construct the improvements or restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of the units in the condominium. A condominium may be terminated for "impossibility" if "it becomes impossible to operate or reconstruct a condominium to its prior physical configuration because of land use laws or regulations.

A condominium may also be terminated in the discretion of the owners.⁵² Commonly referred to as "optional termination," current law provides that unless the condominium declaration provides for a lower percentage, the condominium may be terminated if the termination is approved by at least 80 percent of the total voting interests of the condominium and no more than 10 percent of the total voting interests of the condominium reject the termination.⁵³ A voting interest of the condominium may not be suspended for any reason when voting on an optional termination.⁵⁴ If 10 percent or more of the total voting interests reject a plan of termination, another plan of optional termination may not be considered for 18 months after the date of rejection.⁵⁵

Optional terminations are subject to additional limitations and requirements if 80 percent of the total voting interests are owned by a bulk owner.⁵⁶ A bulk owner is defined as a single holder of such voting interests or an owner together with a related entity or entities that would be considered an insider holding such voting interests.⁵⁷ These limitations are meant to protect the other unit holders. The limitations include allowing former unit owners to lease their units if the former condominium units are offered for lease to the public⁵⁸ and paying a relocation fee to former unit owners who had a homestead exemption on their units.⁵⁹ All unit owners, other than the bulk owner, must be compensated at least 100 percent of the fair market value of their units, as determined by an independent appraiser selected by the termination trustee.⁶⁰ An original purchaser from the developer who rejects the plan of termination and whose unit was granted homestead and is current in payment of assessments, other monetary obligations to the association, and any mortgage encumbering the unit on the date of recording of the plan of termination must receive the original purchase price paid for the unit or current fair market value, whichever is greater.⁶¹ The plan of termination must provide for the payment of a first

⁴⁸ s. 718.117(1), F.S.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ s. 718.117(2), F.S.

⁵² s. 718.117(3), F.S.

⁵³ *Id.*

⁵⁴ s. 718.117(3)(a)(1), F.S.

⁵⁵ s. 718.117(3)(b), F.S.

⁵⁶ s. 718.117(3)(c), F.S.

⁵⁷ *Id.*

⁵⁸ s. 718.117(3)(c)(1), F.S.

⁵⁹ s. 718.117(3)(c)(2), F.S.

⁶⁰ s. 718.117(3)(c)(3), F.S.

⁶¹ *Id.*

mortgage encumbering a unit to the extent necessary to satisfy the lien.⁶² The payment may not exceed the unit's share of the proceeds of termination under the plan.⁶³

Before a plan of termination is presented to the unit owners for consideration, a bulk owner must prepare a sworn statement with disclosures to the other owners.⁶⁴ The bulk owner must identify any person or entity that, directly or indirectly, owns or controls 50 percent or more of the units in the condominium.⁶⁵ If these units are owned by an artificial entity or entities, the bulk owner must disclose any natural person who owns or controls, directly or indirectly, 20 percent or more of the artificial entity or entities that constitute the bulk owner.⁶⁶ The bulk owner must identify the units it has acquired, the date each unit was acquired, and the total compensation paid to each prior owner by the bulk owner.⁶⁷ The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner subject to disclosure must also be contained in the statement.⁶⁸ The bulk owner must also share the factual circumstances that show that the plan complies with the requirements in the law for optional terminations by a bulk owner and that the plan supports the public policies of the condominium termination law.⁶⁹

If the members of the board of administration are elected by the bulk owner, the unit owners may elect at least one-third of the members of the board before approval of any plan of termination.

Condominiums in which 75 percent or more of the units are timeshare units are not subject to the optional termination provisions of s. 718.117, F.S.

Most condominiums are created as a part of new construction. However, a condominium conversion is allowed. A conversion is where an existing improvement, usually an apartment complex, is converted to the condominium form of ownership. Condominium conversions have special requirements pursuant to Part VI of ch. 718, F.S.

Termination of a Condominium – Effect of the Bill

The bill makes a number of changes to condominium terminations pursuant to s. 718.117, F.S.

The bill:

- Adds legislative findings supporting laws on termination of a condominium association.
- Removes the ability of a declaration of condominium to provide for a termination vote of less than the statutory minimum, thus having the effect of requiring at least an 80% vote for termination.
- Changes the veto provision from 10% to 5%
- Extends the re-vote delay after a failed vote for termination from 18 to 24 months.

The bill extends the time from creation of a condominium by conversion to the time that the condominium association may vote for optional termination from 5 years to 10 years.

Where there is a bulk owner involved in the condominium termination, homestead property owners who object to the plan of termination have special protections. An objecting homestead owner is entitled to:

⁶² s. 718.117(3)(c)(4), F.S.

⁶³ *Id.*

⁶⁴ s. 718.117(3)(c)(5), F.S.

⁶⁵ s. 718.117(3)(c)(5)(a), F.S.

⁶⁶ *Id.*

⁶⁷ s. 718.117(3)(c)(5)(b), F.S.

⁶⁸ s. 718.117(3)(c)(5)(c), F.S.

⁶⁹ s. 718.117(3)(c)(5)(d), F.S.

- Demand to lease their unit for 12 months after the termination on the same terms as similar unit types are being offered to the public;
- Payment of a relocation fee;
- Payment of the higher of the current fair market value of the unit or the amount paid to purchase the unit, provided that the objecting owner was an original purchaser from the developer and provided that the owner is current on his or her mortgage payments.

The bill removes the restriction regarding original purchasers from the developer and removes the restriction requiring that the homestead owner be current on his or her mortgage.

A bulk owner seeking optional termination must make certain disclosures to the other owners. The bill increases disclosure requirements to:

- Change from 50 percent or greater bulk owner must disclose the owner or entity that owns interest before plan is presented to unit owners to 25 percent or greater bulk owner;
- Change from reporting natural persons who own or control 20 percent or more of the artificial entity that is a bulk owner to natural persons who own or control 10 percent or more; and
- Require listing of the factual circumstances that show how the plan supports the public policy of s. 718.117(1), F.S.

Condominium associations are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes, a Division of the Department of Business and Professional Regulation ("Division"). Current law has no requirement for filing or review of a plan of termination. The bill requires that a proposed plan for termination must be filed with the Division, who must determine whether the requirements of s. 718.117, F.S., have been met and whether the plan complies with the requirements of s. 718.117, F.S. If so, the Division must grant authority for the termination and the termination may proceed.

The bill is remedial as it addresses the rights and liabilities of the affected parties and therefore applies to all condominiums that have been created under the Condominium Act.

Section 7 of the bill appropriates funding and authorizes 1 FTE for these reviews.

Alterations or Additions to Condominium Property-Current Situation and Effect of the Bill

Condominiums are required to maintain the property of the condominium. In order to maintain condominium property, condominiums may provide a specific procedure to approve material alterations or additions to condominium property in the condominium's declaration, which is the document creating the condominium. If a condominium's declaration does not provide a procedure to approve material alterations or additions then approval by 75 percent of the voting interests is required to approve any material alterations or additions. It is not clear in current statute if the approval must occur before work begins on the additions or alterations.

The bill provides that approval by 75% of voting interests must be obtained prior to work beginning on the material alterations or additions of condominium property.

HOA Budgets and Reserve Accounts – Current Situation

HOAs are required to prepare an annual budget for the coming year. The budget must include:

- Estimated revenues and expenses;
- Estimated surplus or deficits; and
- Fees for the association.⁷⁰

⁷⁰ s. 720.303(6)(a), F.S.
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DATE: 3/30/2017

Once the annual budget is adopted, it becomes the basis for allocating assessments among the parcel owners.⁷¹ Assessments are sums of money owed by parcel owners to an HOA to fund the HOA.⁷²

A condominium association may call a special meeting if it adopts an annual budget in which its proposed assessments exceed 115% of its assessments for the previous year.⁷³ A special meeting to consider a substitute budget must be called if 10 percent of the voting interests petition for the meeting within 21 days of the adoption of the budget. The meeting must take place within 60 days of the adoption of the annual budget, and notice must be delivered by mail or hand at least 14 days before the meeting. HOAs have no similar provision.

A reserve account is in effect a savings account whereby a HOA collects periodic advance payments to cover future anticipated capital expenditures and deferred maintenance items. Monies in a reserve account, including interest, must be spent for maintenance, repair, and replacement of the reserve item. Examples include but are not limited to roof replacement, building painting, pavement resurfacing, and for any other items for which the deferred maintenance expense or replacement costs exceed \$10,000.⁷⁴

An HOA may include reserve accounts in an annual budget by a majority vote of all voting interests whereas condominiums must provide for reserve accounts unless specifically waived. If an HOA or developer establishes a reserve account the HOA must maintain and budget the reserve account.⁷⁵

There are two types of reserve accounts:

1. Separate reserve accounts which are accounts that may only be used for one item or expense such as a roof or building painting; and
2. Pooled reserve accounts which are accounts for a group of capital expenditures that are pooled together. For example, an HOA may have a pooled reserve account for roof replacement, building painting, and pavement resurfacing, instead of three separate reserved accounts.⁷⁶

If an HOA decides to include separate reserve accounts in the annual budget then the HOA must:

- Determine the amount for the reserve account using a specific formula based upon the estimated remaining life of the item and estimated cost to replace or maintain the item.
- For example, the estimated cost to replace a roof is \$86,000. The account balance for the roof is \$50,000. The estimated remaining useful life of the roof is four years. (\$86,000 minus \$50,000=\$36,000. \$36,000 divided by 4 = \$9,000.) The current years funding requirement for reserve for the roof would be \$9,000.⁷⁷

If an HOA has a pooled reserve account in the annual budget then the HOA will use a separate method to calculate the amount to fund the pooled reserve account. The formula to calculate the amount to fund a pooled account must reflect the remaining useful life and estimated replacement cost for each item and expenditure in the pooled reserve account.⁷⁸

An HOA may vote to waive funding, reduce funding, or terminate a reserve account by a majority vote of the voting interests. If an association is controlled by the developer than the developer may not use reserve funds for anything other than their intended purposes without the majority approval of the non-developer voting interests⁷⁹

⁷¹ Charles F. Dudley & Peter Dunbar, *The Law of Florida Homeowners Associations*, 47 (9th ed. 2012-13).

⁷² *Id.* at 5.

⁷³ s. 718.112(2)(e)2, F.S.

⁷⁴ *Id.*

⁷⁵ s. 720.303(6), F.S.

⁷⁶ Rule 61B-22.005 of the Florida Administrative Code.

⁷⁷ DBPR, *Budgets & Reserves Schedules: A Self-Study Training Manual*, 41-42, 2010.

⁷⁸ Charles F. Dudley & Peter Dunbar, *The Law of Florida Homeowners Associations*, 47 (9th ed. 2012-13).

⁷⁹ s. 720.303(6), F.S.

If an HOA decides not establish reserve accounts, the HOA must notify its members in conspicuous type on the HOA's annual financial report.⁸⁰

HOA Budgets and Reserve Accounts – Effect of the Bill

The bill amends the laws on HOA annual budgets and reserves to provide that:

- If HOA assessments for an annual budget exceed 115 percent of assessments for the preceding year and 10 percent of the voting interests request a special meeting within 21 days of the adoption of the budget, the board must:
 - Conduct a special meeting of the unit owners to consider a substitute budget within 60 days of adopting the annual budget.
 - Hand deliver or mail notice of the meeting to each parcel owner at least 14 days prior to such special meeting.
 - An officer or manager of the association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement, and file the affidavit among the official records of the association.
- Parcel owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests unless the bylaws require adoption by a greater percentage of voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget will take effect.
- Any determination of whether assessments exceed 115 percent of assessments for the prior fiscal year excludes any authorized provision for reasonable reserves for repair or deferred maintenance of association property, anticipated expenses which the board does not expect to be incurred on a regular basis, or assessments to improve association property, common areas, or other items that are the obligation of the association pursuant to the governing documents.

The bill amends HOA reserve accounts to provide that:

- HOAs must include reserve accounts in the annual budget for items with deferred maintenance costs that exceed \$100,000, instead of having the option to include reserve accounts in the annual budget.
- HOAs must use the pool reserve account funding formula to determine the funding for reserve accounts. However, HOAs may vote to use the funding formula for separate accounts.
- Voting interests mean parcel owners who are subject to fund the reserves in question.
- Proxy questions relating to waiving, reducing, or terminating funding of reserve accounts must contain a statement in conspicuous type that waiving funding for reserve accounts may result in unanticipated special assessments.
- Before turning control over to an association a developer may vote to waive or reduce reserve funds by using the voting interests allocated to the parcels owned by the developer. However, a developer may not use his or hers' voting interests to use reserve funds for anything other than the reserve expenditures.
- Reserve funds must be held in a separate bank account established for such funds.

Reserve funds and assessment percentages of an annual budget do not apply to mandatory reserve accounts required by any local authority, water or drainage district, community development district, or political subdivision that has authority to approve and control subdivision infrastructure.

HOA Elections – Current Situation and Effect of the Bill

HOA are administered by a board of directors whose members are elected.⁸¹ A HOA association is required to hold board of director elections at its annual meeting or as provided in its governing documents.⁸² Elections are conducted in accordance with the procedures set forth in the governing

⁸⁰ s. 720.303(6), F.S.

⁸¹ ss. 720.303 & 720.307, F.S.

⁸² s. 720.306(2), F.S.

documents of the association. An election is not required unless more candidates are nominated than vacancies exist.⁸³

The bill provides that if an election is not required because there are fewer or equal candidates than vacancies, and nominations from the floor are not required, then write-in nominations are not permitted. The candidates will commence service on the board of directors regardless of whether a quorum was attained at the annual meeting.

Payment of HOA Assessments – Current Situation and Effect of the Bill

HOA are authorized to impose assessments on owners. If assessments or installments of assessments are not paid timely then they will accrue interest. Any payment received by a HOA for payment of an assessment or installment that accrued interest will first be applied to the interest accrued, then to any administrative late fee, then to any costs and reasonable attorney fees, and then to the delinquent assessment.⁸⁴ The order of payments is the same as condominium law.

The Florida Uniform Commercial Code (UCC) allows a debtor to make a restrictive notation on a payment instrument. Accepting the payment instrument with the notation may then be considered an accord and satisfaction of the outstanding debt.⁸⁵

The bill provides that this application of the payment in HOA law applies notwithstanding the UCC. The bill further provides that this is intended to clarify existing law.

B. SECTION DIRECTORY:

Section 1 creates s. 633.2225, F.S., regarding signs for condominium and cooperative buildings without sprinkler systems.

Section 2 amends s. 718.111, F.S., regarding official records and financial reporting for condominiums.

Section 3 amends s. 718.112, F.S., regarding retrofitting fire sprinkler systems and ELSS for condominiums.

Section 4 amends s. 718.113, F.S., regarding alterations or additions to condominium property.

Section 5 amends s. 718.111, F.S., regarding termination of condominium.

Section 6 provides for application to existing condominiums.

Section 7 provides an appropriation.

Section 8 amends s. 718.707, F.S., regarding classifications of bulk buyer and assignee for condominiums.

Section 9 amends s. 719.104, F.S., regarding official records for cooperatives.

Section 10 amends s. 719.1055, F.S., regarding retrofitting fire sprinkler systems and ELSS for cooperatives.

⁸³ *Id.*

⁸⁴ s. 720.3085(3), F.S.

⁸⁵ s. 673.3111, F.S. The UCC is a set of regulations adopted by all 50 states with the goal of harmonizing the laws of commercial transactions throughout the United States. Duke Law, *Uniform Commercial Code*, <https://law.duke.edu/lib/researchguides/ucc/> (last visited on March 30, 2017).

Section 11 amends s. 719.106, F.S., regarding board members and meetings for cooperatives.

Section 12 amends s. 719.107, F.S., regarding common expenses for cooperatives.

Section 13 amends s. 720.303, F.S., regarding budget meetings and board members for HOA associations.

Section 14 amends s. 720.306, F.S., regarding board elections for HOA associations.

Section 15 amends s. 720.3085, F.S., regarding assessments for HOA associations.

Section 16 amends s. 720.401, F.S., regarding disclosure summaries for prospective members of HOA associations.

Section 17 provides an effective date.

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:

The bill appropriates the sums of \$85,006 in recurring funds and \$4,046 in nonrecurring funds from the Division of Florida Condominiums, Timeshares and Mobile Homes Trust Fund to the Department of Business and Professional Regulation in FY 2017-18. The appropriation authorizes and 1.00 full-time equivalent position and associated salary rate of \$56,791. The funding and position are necessary to accommodate increased workload on the Division.

Specifically, the workload requirements are due to the bill requiring that a proposed plan for termination must be filed with the Division, who must determine whether the requirements of s. 718.117, F.S., have been met and whether the plan for termination complies with the requirements set forth in this bill. If so, the Division must grant authority for the termination and the termination may proceed.

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 provisions of this bill regarding sprinklers and engineered life safety systems appear to have a positive economic impact on condominium and cooperative owners and a corresponding negative economic impact on contractors. Property insurance costs and rates may factor into the economic cost. The impact is unknown because it is dependent upon how many associations opt out.

It appears that this bill may lessen the number of optional terminations and, where they occur, may increase the number of homestead condominium owners entitled to the homestead-level increased payment from a bulk buyer upon termination.

The remainder of the bill does not appear to create any significant private sector economic impact.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

A declaration of condominium is a form of contract between the members of the association. Where a recorded declaration may have termination provisions or may implement the protections provided by s. 718.110(4), F.S., the bill may be implicate art. I, s. 10 of the Florida Constitution and art. I, s. 10 of the United States Constitution, both of which prohibit the Legislature from passing any law that impairs "the obligation of contracts."

As a threshold matter, a law must "substantially impair" a contractual right for it be constitutionally problematic.⁸⁶ The Florida Supreme Court has also held that "[a]n impairment may be constitutional if it is reasonable and necessary to serve an important public purpose."⁸⁷

The courts have adopted a balancing test to "determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state's objective, or whether it unreasonably intrudes into the parties' bargain to a degree greater than is necessary to achieve that objective."⁸⁸ Factors considered in the balancing test include:

- (a) Was the law enacted to deal with a broad, generalized economic or social problem?⁸⁹
- (b) Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by the state?
- (c) Does the law effect a temporary alteration of the contractual relationships of those within its coverage, or does it work a severe, permanent, and immediate change in those relationships irrevocably and retroactively?⁹⁰

Additionally, the United States Supreme Court has found that parties cannot avoid state regulations and restrictions in an enterprise that is already subject to state regulation by simply entering into a

⁸⁶ *Pomponio v. Claridge of Pompano Condo., Inc.*, 378 So. 2d 774, 779 (Fla.1979) (citing *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-45 (1978)).

⁸⁷ *Id.* at 778-79 (citing *United States Trust Co.*, 431 U.S. at 25 (1977)).

⁸⁸ *Id.* at 780.

⁸⁹ In determining the purpose of a statute, courts frequently look to the legislature's express statements of intent in the statute. See *Pomponio*, 378 So. 2d at 781 (noting in its analysis of the public purpose of the statute that the specific objectives for the statute are "neither expressly articulated nor plainly evident" in the statute).

⁹⁰ *Id.* at 779.

contract.⁹¹ This finding may be particularly relevant given the Florida Supreme Court's statement that, "In Florida, condominiums are creatures of statute and as such are subject to the control and regulation of the Legislature. That body has broad discretion to fashion such remedies as it deems necessary to protect the interests of the parties involved."⁹²

The Third District Court of Appeal has found that portions of s. 718.117, F.S., may violate the impairment of contracts provision. In the case, the declaration of a condominium association required a 100% vote for optional termination and a 100% vote to amend the declaration regarding termination. The association attempted a termination in which it was able to achieve the statutory 80% vote. The association argued that the statute controlled over the declaration. The district court of appeal disagreed, relying on the third prong of the *Pompino* test (above) to find that the statute impaired vested contractual rights and thus could not override the 100% vote requirement of the declaration.⁹³

B. RULE-MAKING AUTHORITY:

The bill creates a need for rulemaking by the State Fire Marshal relating to signage for condominium and cooperative buildings without a sprinkler system in the common areas.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Careers and Competition Subcommittee adopted a strike-all amendment and reported the bill favorably as a subcommittee substitute. The amendments add the following elements to the bill:

- Requires votes related to alteration or additions to condominiums to be held prior to beginning work.
- Removes the provision that prohibited a cooperative from waiving financial reporting requirements for more than 3 consecutive years.
- Removes the provision that allowed cooperatives and homeowners' associations operating fewer than 50 units to prepare a report of cash receipts and expenditures in lieu of a financial report.
- Amends cooperative director and officer requirements by providing that a director or officer is deemed to have abandoned the office if the director or officer is more than 90 days delinquent in the payment of any monetary obligation due the association.
- Amends cooperative board member eligibility by providing that in residential cooperatives that are more than 10 units, co-owners of a unit may not serve as members of the board of directors at the same time unless there are not enough candidates to fill the positions at the time of the vacancy or the co-owners own more than one unit.
- Amends cooperative bulk contracts to include communication services defined in ch. 202, F.S.
- Allow homeowners' association's to provide electronic notice to any member who has provided a fax number or email address to the association for purposes of receiving notice.

On March 28, 2017, the Civil Justice & Claims Subcommittee adopted a strike-all amendment and reported the bill favorable as a committee substitute. The amendment:

- Required condominium and cooperative buildings that have opted out of installing sprinkler systems or ELSS in common areas to post a sign on their buildings.

⁹¹ *Energey Reserves Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400, 411 (1983).

⁹² *Century Vill., Inc. v. Wellington, E, F, K, L, H, J, M, & G, Condo. Ass'n*, 361 So. 2d 128, 133 (Fla. 1978).

⁹³ *Tropicana Condo. Ass'n v. Tropical Condo., LLC*, 2016 Fla. App. LEXIS 17090 (3D15-2583, November 16, 2016)

- Reinserted the requirement that a unit owner must notify a new owner before closing, or a new renter before signing the lease, that the condominium or cooperative building has opted out of installing a sprinkler system or ELSS.
- Provided that timeshare condominiums are subject to the firesafety provisions in s. 721.24, F.S., not the provisions in ch. 718, F.S.
- Added provisions amending the law relating to condominium termination.
- Added an appropriation to fund DBPR's additional duties relating to condominium terminations.
- Provided that a homeowners' association must have budget reserve for any item with a deferred maintenance cost in excess of \$100,000. How reserves are funded was also funded.
- Added a section to the disclosure summary for a prospective parcel owner in a homeowners' association that the budget of the association may not include reserve funds for deferred maintenance.

This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.