

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Finance and Tax

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BILL: SB 996

INTRODUCER: Senators Garcia and Hutson

SUBJECT: Community Associations

DATE: March 17, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<b>Favorable</b>
2.	<u>Gross</u>	<u>Babin</u>	<u>FT</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 996 authorizes condominium and cooperative associations to represent the association’s unit owners in court proceedings that relate to an association’s joint petition to a value adjustment board. An association must provide unit owners with notice of its intent to represent the unit owners’ interests in the court proceedings and advise the unit owners that they may opt out of being represented by the association within 14 days of receiving the notice.

Current law permits a condominium, cooperative, and mobile homeowners’ association to petition the value adjustment board on behalf of the unit owners to challenge the property appraiser’s tax assessment. Current law also permits associations to appeal the decision of the value adjustment board in circuit court. However, an association may not defend unit owners on an appeal by the property appraiser in circuit court.

The Revenue Estimating Conference determined that the bill, in any given year, will result in either no impact or will reduce local government revenues by an indeterminate amount. However, over time, the bill will reduce local government revenue by an indeterminate amount.

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

**II. Present Situation:**

**Condominium Associations**

A condominium is a “form of ownership of real property created under ch. 718, F.S.”<sup>1</sup> Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements, and members of

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<sup>1</sup> Section 718.103(11), F.S.

the condominium association.<sup>2</sup> For unit owners, membership in the association is an unalienable right and required condition of unit ownership.<sup>3</sup> A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.<sup>4</sup> A declaration is similar to a constitution in that it:

[S]trictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.<sup>5</sup>

Condominium associations are creatures of statute and private contracts. Under the Florida Condominium Act, associations must be incorporated as a Florida for-profit corporation or a Florida not-for-profit corporation.<sup>6</sup> Although unit owners are considered shareholders of this corporate entity, like other corporations, a unit owner's role as a shareholder does not implicitly provide them any authority to act on behalf of the association.

A condominium association is administered by a board of directors referred to as a "board of administration."<sup>7</sup> The board of administrators is comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements, which are owned in undivided shares by unit owners.<sup>8</sup> In litigation, an association's board of directors is in charge of directing attorney actions.<sup>9</sup>

### **Cooperative Associations**

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative owner receives an exclusive right to occupy the unit based on their ownership interest in the cooperative entity as a whole. A cooperative owner is either a stockholder or member of a cooperative apartment corporation who is entitled, solely because of ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.<sup>10</sup> The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.<sup>11</sup>

Section 719.103(12), F.S., defines a "cooperative" to mean:

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<sup>2</sup> See s. 718.103, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> Section 718.104(2), F.S.

<sup>5</sup> *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

<sup>6</sup> Section 718.303(3), F.S.

<sup>7</sup> Section 718.103(4), F.S.

<sup>8</sup> Section 718.103(2), F.S.

<sup>9</sup> Section 718.103(30), F.S.

<sup>10</sup> See *Walters v. Agency for Health Care Administration*, 2019 WL 6691513, 44 Fla. L. Weekly D2898 (Fla. 3rd DCA 2019)

<sup>11</sup> See ss. 719.106(1)(g) and 719.107, F.S.

[T]hat form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

### **Homeowners' Associations in Mobile Home Parks**

Chapter 723, F.S., relates to mobile home park lot tenancies. In these communities, the homeowner does not own the real estate upon which the mobile home is located; the homeowner leases the real property (mobile home lot) from the mobile home park owner. Homeowners in these communities may form a homeowners' association.<sup>12</sup>

The mobile home park owner may pass on, at any time during the term of the lot rental agreement, ad valorem property taxes, non-ad valorem assessments, and utility charges, or increases of either, to the mobile home owner if such costs are not otherwise being collected in the remainder of the lot rental amount and the passing on of the costs was disclosed prior to tenancy.<sup>13</sup>

### **Tax Assessments**

Condominium and cooperative unit owners are assessed yearly ad valorem<sup>14</sup> taxes by the county property appraiser.<sup>15</sup> For condominium and cooperative parcels, ad valorem taxes are assessed on the parcels and not upon the condominium or cooperative property as a whole, and the common elements or area are divided and levied proportionally among individual parcel owners.<sup>16</sup>

Current law permits condominium, cooperative, and homeowners' associations defined in s. 723.075, F.S., (mobile homeowners' associations) to file a single joint petition to the value adjustment board ("VAB") contesting the tax assessment of all units within the community.<sup>17</sup> The condominium, cooperative, or mobile homeowners' associations must provide the unit owner notice of its petition to the VAB and "provide at least 20 days for a unit owner to elect, in writing that his or her unit not be included in the petition."<sup>18</sup> Although the mobile homeowners' associations are entitled to petition the VAB, current law references only "unit owners" in the context of the notice and opt-out requirements for the petition to the VAB. There are no "unit owners" in a homeowners' association.

A decision by the VAB may only be appealed to the circuit court.<sup>19</sup> Current law allows a condominium, cooperative, or mobile homeowners' association to appeal, as a plaintiff, the VAB's decision.<sup>20</sup>

<sup>12</sup> See ss. 723.075 through 723.0791, F.S.

<sup>13</sup> Section 723.031(5)(c), F.S.

<sup>14</sup> Section 192.001(1), F.S., defines the term "ad valorem tax" to mean a tax based upon the assessed value of property.

<sup>15</sup> Section 194.011, F.S.

<sup>16</sup> Sections 718.120(1) and 719.114, F.S.

<sup>17</sup> Section 194.011(3)(e), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Section 194.171(1), F.S.

<sup>20</sup> See ss. 194.181(1) and (2), F.S.

Under certain circumstances, a property appraiser may appeal a VAB decision to the circuit court.<sup>21</sup> In a recent decision, a Florida court found that if the property appraiser appeals a VAB decision, each unit owner must each defend the suit if the unit owner so chooses; the association may not represent all unit owners in defending the property appraiser's appeal.<sup>22</sup>

### **III. Effect of Proposed Changes:**

#### **Value Adjustment Board Petitions**

The bill amends s. 194.011(3)(e), F.S., to provide that the association's notice of intent to file a joint petition with the VAB must also include a statement that by not opting out of the VAB petition the unit or parcel owners will also be represented by the association in related judicial proceedings, without the unit or parcel owners being named or joined as parties.

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

Additionally, if the association is a condominium association or cooperative association, the notice must also be posted conspicuously on the condominium or cooperative property in the same manner as notices of board meetings.<sup>23</sup>

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

The bill also clarifies that the treatment under the bill applies whether the individual property owner is referred to as a unit owner or parcel owner.

The bill provides that the ability of the association to represent the individual property owners in related judicial proceedings is intended to clarify existing law and applies to cases pending on July 1, 2021.

#### **Judicial Appeals**

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

The bill requires condominium and cooperative associations to provide unit or parcel owners a notice of the property appraiser's complaint. The notice must advise the parcel or unit owners that they may elect to:

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<sup>21</sup> See s. 194.036, F.S.

<sup>22</sup> *Central Carillon Beach Condominium Association, Inc., et al., v. Garcia, etc., et al.*, 245 So. 3d 869 (Fla. 3d DCA 2018).

<sup>23</sup> See ss. 718.112(2) and 719.106(1), F.S., for the manner in which board meetings must be noticed.

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

The notice of the property appraiser's complaint must be hand delivered or sent by certified mail, return receipt requested, except that such notice may be electronically transmitted to a unit or parcel owner who has expressly consented in writing to receiving such notices by electronic transmission. However, the notice must also be posted conspicuously on the condominium or cooperative property in the same manner for notice of board meetings.<sup>24</sup> An association must give unit or parcel owners 14 days to opt out of the association's representation. Unit or parcel owners who do not respond to the association's notice will be represented in the response or answer filed by the association.

Tax collectors will be required to accept payment of the estimated amount in controversy, as determined by the tax collector, as to a specific unit or parcel. Upon the payment, the unit or parcel would be released from any *lis pendens*<sup>25</sup> and the unit or parcel owner may elect to remain in or be dismissed from the action.

### **Condominium Association Powers**

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

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

The bill also provides that the amendments related to condominium association powers are intended to clarify existing law and apply to cases pending on July 1, 2021.

### **Effective Date**

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

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<sup>24</sup> *Supra* FN 23

<sup>25</sup> "Lis pendens" means a pending lawsuit or a recorded notice in the chain of title that the property is the subject of a matter on litigation. *See* BLACK'S LAW DICTIONARY (11<sup>th</sup> ed. 2019).

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

Not applicable. This bill does not require counties or municipalities to spend funds, limit their authority to raise revenue, or reduce the percentage of a state tax shared with them as specified in Article VII, s. 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

The bill does not create or raise state taxes or fees. Therefore, the requirements of Article VII, s. 19 of the Florida Constitution do not apply.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The Revenue Estimating Conference determined that the bill, in any given year, will result in either no impact or will reduce local government revenues by an indeterminate amount. However, over time, the bill will reduce local government revenue by an indeterminate amount.

**B. Private Sector Impact:**

A condominium or cooperative association's ability to defend an appeal on behalf of its unit or parcel owners may reduce the burden to such owners who would no longer need to hire private counsel to defend the appeal.

**C. Government Sector Impact:**

Authorizing a property appraiser to only name the association as a party defendant on an appeal against a single joint petition from the VAB may reduce the case load of circuit courts.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

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

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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