

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Diaz de la Portilla, Chair
Senator Ring, Vice Chair

MEETING DATE: Tuesday, April 7, 2015
TIME: 4:00 —6:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Diaz de la Portilla, Chair; Senator Ring, Vice Chair; Senators Bean, Benacquisto, Brandes, Joyner, Simmons, Simpson, Soto, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 64 Legg (Identical H 3549)	Relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta by Miami-Dade County; Providing for the relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, the surviving children of Nhora Acosta, by Miami-Dade County; providing for an appropriation to compensate them for the wrongful death of their mother, Ms. Acosta, due to injuries sustained as a result of the negligence of a Miami-Dade County bus driver; providing a limitation on the payment of fees and costs, etc.	SM 04/03/2015 Recommendation: Unfavorable JU 04/07/2015 CA FP
2	CS/SB 312 Children, Families, and Elder Affairs / Detert (Similar CS/CS/H 235)	Restitution for Juvenile Offenses; Requiring a child's parent or guardian, in addition to the child, to make restitution for damage or loss caused by the child's offense; authorizing the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility of the child; specifying that the Department of Children and families, foster parents, a facility registered under s. 409.176, F.S., and specified agencies contracted with the department are not guardians for purposes of restitution, etc.	CJ 03/02/2015 Favorable CF 03/26/2015 Fav/CS JU 04/07/2015 FP

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, April 7, 2015, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	CS/SB 736 Regulated Industries / Stargel (Similar CS/CS/H 611)	Residential Properties; Providing requirements relating to the request for an estoppel certificate by a unit or parcel owner or a unit or parcel mortgagee; providing that the association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate under certain conditions; providing that the association waives any claim against a person or entity who would have relied in good faith upon the estoppel certificate under certain conditions; deleting provisions regarding expedited court action to compel issuance of an estoppel certificate, etc.	RI 03/24/2015 RI 03/31/2015 Fav/CS JU 04/07/2015 FP
4	SB 796 Evers (Identical H 4021)	Financial Reporting; Deleting provisions with respect to the preparation by certain condominium associations, cooperative associations, and homeowners' associations of annual reports of cash receipts and expenditures in lieu of certain financial statements, etc.	RI 03/31/2015 Favorable JU 04/07/2015 RC
5	SB 1528 Evers	Commission on Federalism; Creating the Commission on Federalism; providing for the membership, meetings, and staff support of the commission; providing duties of the commission; providing criteria to evaluate a federal law; specifying what sources the commission may rely on in an evaluation of a federal law; requiring the commission to submit biannual reports to the Governor and the Legislature, etc.	JU 04/07/2015 GO RC
6	CS/SB 912 Environmental Preservation and Conservation / Bean (Similar CS/H 787)	Recycled and Recovered Materials; Exempting a person who sells, transfers, or arranges for the transfer of recycled and recovered materials from liability for hazardous substances released or threatened to be released from the receiving facility or site under certain circumstances, etc.	EP 03/31/2015 Fav/CS JU 04/07/2015 FP

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, April 7, 2015, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 1172 Regulated Industries / Latvala (Similar CS/CS/H 643)	Termination of a Condominium Association; Providing and revising procedures and requirements for termination of a condominium property; revising requirements relating to the right to contest a plan of termination, etc.	RI 03/24/2015 Fav/CS JU 04/07/2015 FP
8	SB 7070 Appropriations (Compare CS/CS/H 335, CS/H 547, H 705, H 1017, H 7113, H 7119, CS/S 476, CS/S 1340, S 1452, S 1458, S 7068)	Mental Health and Substance Abuse; Adding substance abuse impairment to a list of disorders for which the Legislature intends to develop treatment programs; adding substance abuse services as a program focus for which the Department of Children and Families is responsible; adding substance abuse care as an element of the continuity of care management system that the department must establish, etc.	JU 04/07/2015
9	SB 238 Ring (Identical H 479)	Athletic Coaches; Requiring an independent sanctioning authority to dismiss an athletic coach ejected from a game for the remainder of that sport season under certain circumstances; authorizing such athletic coach to resume working under certain circumstances, etc.	CF 03/12/2015 Favorable CA 03/31/2015 Favorable JU 04/07/2015 FP
10	CS/SB 748 Regulated Industries / Ring (Similar CS/H 791, Compare CS/CS/CS/H 1211, S 348)	Residential Properties; Providing that a certain deed, transfer, or conveyance from an owner of property is subject to certain taxes; providing that the vote necessary to charge use fees for the use of the common elements or association property may be approved by a majority of the voting interests present, in person or by proxy, at a meeting of the association if a quorum has been established; authorizing condominium associations to conduct elections by electronic voting under certain conditions, etc.	RI 03/18/2015 Fav/CS JU 04/07/2015 FP

Other Related Meeting Documents



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/19/14	SM	Unfavorable
4/7/15	JU	Pre-meeting
	CA	
	FP	

December 19, 2014

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 64** – Senator John Legg
Relief of Monica Cantillo Acosta and Luis Alberto Acosta

SPECIAL MASTER'S FINAL REPORT

THIS UNOPPOSED, NEGLIGENCE-BASED EQUITABLE CLAIM FOR \$940,000, IN LOCAL FUNDS, AGAINST MIAMI-DADE COUNTY FOR NON-ECONOMIC DAMAGES IS BROUGHT BY THE TWO CHILDREN OF A PASSENGER WHO FELL IN A BUS AND SUFFERED A FATAL HEAD INJURY AFTER THE DRIVER STOPPED SUDDENLY TO AVOID A COLLISION.

CURRENT STATUS:

On December 21, 2010, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, held a de novo hearing on a previous version of this bill, SB 60 (2011). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported unfavorably. The same administrative law judge served as the Senate special master for the identical bill the following year, SB 50 (2012). The judge issued an effectively identical report and recommended that the bill be reported unfavorably. That report is attached as an addendum to this report.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Sandra Stovall. My responsibilities were to review the records relating to the claim

bill, be available for questions from the members, and determine whether any changes have occurred since the hearing, which if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

According to counsel for the parties, no changes have occurred since the hearing which might have altered the findings and recommendations in the report.

The prior claim bill, SB 50 (2012), is effectively identical to the 2015 bill filed for the 2015 Legislative Session, except the full amount to be paid by Miami-Dade County under the claim bill correctly reflects the amount agreed upon in the settlement agreement (\$940,000) rather than the entire amount of the judgment.

Respectfully submitted,

Sandra R. Stovall
Senate Special Master

cc: Debbie Brown, Secretary of the Senate



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/2/11	SM	Unfavorable

December 2, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 50 (2012)** – Senator Ellyn Setnor Bogdanoff
Relief of Monica Cantillo Acosta and Luis Alberto Acosta

SPECIAL MASTER'S FINAL REPORT

THIS UNOPPOSED, NEGLIGENCE-BASED EQUITABLE CLAIM FOR \$940,000, IN LOCAL FUNDS, AGAINST MIAMI-DADE COUNTY FOR NON-ECONOMIC DAMAGES IS BROUGHT BY THE TWO CHILDREN OF A PASSENGER WHO FELL IN A BUS AND SUFFERED A FATAL HEAD INJURY AFTER THE DRIVER STOPPED SUDDENLY TO AVOID A COLLISION.

FINDINGS OF FACT:

On November 12, 2004, at 2:28 p.m., Nhora Acosta, 53, and her friend Zunilda Vargas boarded a bus operated by the Miami-Dade Transit Authority (MTA). The bus was eastbound on SW 8th Street in Miami. Ms. Acosta was returning to work after having lunched with Ms. Vargas. Neither woman was elderly, handicapped, infirm, or burdened with packages; both were able-bodied and apparently healthy.

The bus was crowded, and there were no seats for the women near the front. They began walking down the center aisle to the rear of the bus, where seats were available in an elevated seating area. To access this raised seating platform, a passenger must climb two steps, which are incorporated into the center aisle. As Ms. Acosta and Ms. Vargas headed to the back of the bus, the driver, Fernando Arrieta, pulled away

from the bus stop and proceeded to drive eastward on SW 8th Street, in the right lane.

About 11 seconds after the bus began moving, an SUV traveling in the left eastbound lane began pulling into the right lane, in front of the bus. This maneuver took nearly 4 seconds to complete. Immediately upon changing lanes, however, the SUV began breaking. Mr. Arrieta simultaneously stepped on the bus's breaks, to avoid a rear-end collision with the SUV.

The SUV needed to stop suddenly because a jaywalker was standing in the middle of the road, in between the two eastbound lanes. Two vehicles in the left eastbound lane had come to a complete stop. (The SUV had changed lanes, moving left-to-right in front of the bus, to pass these vehicles on the right.) It is reasonable to infer, and the undersigned finds, that the jaywalker had not anticipated that the SUV would cut in front of the bus when he began to cross the eastbound lanes on SW 8th Street. When the SUV suddenly appeared in the right lane, ahead of, and moving faster than, the bus, the jaywalker froze, calculating that he might not beat the SUV if it failed to slow down. Once the SUV began to break, however, the jaywalker dashed in front of it, safely reaching the sidewalk 2 seconds later. The SUV continued forward, and the two vehicles in the left lane, which had stopped, now took off. The bus came to a complete stop in the right lane, at the curb. Twenty seconds had elapsed from the time the bus pulled away after picking up Ms. Acosta and Ms. Vargas.

Inside the bus, a tragic accident had occurred. At about the moment the SUV began to change lanes, Ms. Acosta stepped up onto the rear seating platform. Ms. Vargas, who was right behind her, did the same about 2 seconds later. When the bus stopped to avoid running into the SUV, both Ms. Acosta and Ms. Vargas lost balance. Ms. Acosta tripped over Ms. Vargas's leg and fell off the elevated platform, striking her head on the lower center aisle. The injury proved to be fatal. Ms. Acosta died the next day in the hospital, having never regained consciousness.

The foregoing findings are based not only on the testimony presented, but also on the undersigned's independent review of the videos that the bus's onboard cameras recorded.

Based on a careful review of the videos, the following chronology of the material events has been created:

Hour	Minute	Second(s)	Event
2PM	28	44	Front doors are open
		46	Acosta steps onto bus
		47	Vargas boards
		48-53	Acosta pays fare; begins walking to back of crowded bus
		53-56	Vargas pays fare; begins walking to back of crowded bus
		57	Bus starts moving forward
		57-59	Acosta and Vargas walking to back of moving bus
	29	00-06	Acosta and Vargas still walking to back of moving bus
		06-08	Acosta steps up onto rear seating platform; Vargas approaching her from behind
		08-12	SUV, moving left to right, pulls into the right eastbound lane, in front of bus
		09-10	Vargas steps up onto rear seating platform, behind Acosta
		09-16	Two vehicles have stopped moving in the left eastbound lane, one behind the other
		11-13	Drives applies the breaks
		12-13	Pedestrian stands between the left and right eastbound lanes; two vehicles are parked in the left lane, having stopped for the pedestrian
		12	SUV is breaking
		13-14	Vargas loses balance, begins to fall

		14-15	Acosta begins to trip on Vargas's outstretched leg, falls
		14-16	Pedestrian dashes, left to right, toward sidewalk, directly in front of the SUV in the right eastbound lane
		16-18	Acosta is down; Vargas recovers balance, stands without having fallen
		17	Bus is at complete stop; SUV proceeds eastbound
		17-21	Two vehicles in left lane drive off, eastbound
		29-33	Front doors open
		36	Driver gets up from seat
		40	Driver begins walking back

At the conclusion of the trial in the civil action that Ms. Acosta's daughter Monica and son Luis brought against Miami-Dade County, which will be discussed below, the jury returned a verdict in favor of the plaintiffs, awarding each of them \$3 million for non-economic damages, i.e., "pain and suffering." No award for economic damages, e.g., lost earnings, was made because Ms. Acosta, a Venezuelan citizen, was in the U.S. illegally, having overstayed her tourist visa, and hence her children could not prove earnings from lawful employment.

The jury in the civil trial was asked to compare the negligence, if any, of Ms. Acosta; the unnamed pedestrian; the unnamed driver of the SUV; and Mr. Arrieta, and to apportion the fault between them by percentages. The jury determined that Mr. Arrieta's negligence was the sole cause of Ms. Acosta's fatal injury.

The undersigned considers the jury's apportionment of 100 percent of the fault to the bus driver to be inexplicable (except as the product of sympathy and emotion) and, ultimately, indefensible. Clearly, the unnamed pedestrian, who decided to cross a busy road outside of a marked crosswalk, acted recklessly and endangered himself and others. This jaywalker therefore owned the lion's share of the blame for this unfortunate accident, and the undersigned charges him with 90 percent of the fault. The unnamed driver of the SUV

was partially responsible for the accident; had he remained in the left lane and slowed to a stop, as the two vehicles in front of him did, it is likely that this accident would not have occurred. The undersigned places 10 percent of the blame on this driver. Mr. Arrieta's conduct in bringing the bus to a controlled, nonviolent stop to avoid rear-ending the SUV, which had stopped suddenly to avoid hitting the jaywalker standing the middle of the busy road, was reasonable under the circumstances.

The claimants argue that Mr. Arrieta was negligent in failing to wait for Ms. Acosta and her friend to sit down or grab a handrail. As will be discussed below, the standard of care does not generally require a bus driver to wait for a boarding passenger to sit down before pulling away, unless the passenger is elderly, infirm, disabled, etc., or the driver knows or reasonably should know of some reason (besides ordinary traffic conditions) that might cause him to make a sudden stop. Based on the evidence presented in this case, the undersigned finds that (a) both Ms. Acosta Ms. Vargas were able-bodied and apparently healthy; and (b) Mr. Arrieta had no reason to anticipate that a jaywalker soon would cross his bus's path and disrupt traffic. Thus, it is determined that Mr. Arrieta did not breach the duty of care by driving the bus while Ms. Acosta and Ms. Vargas were still in the process of finding seats.

Even if Mr. Arrieta were negligent in failing to wait for Ms. Acosta to take her seat before driving off, however, which the undersigned (based on the law and the evidence presented here) does not believe was the case, he was certainly not more responsible for the accident than the unnamed driver of the SUV. At most, therefore, Mr. Arrieta was 5 percent at fault, the SUV driver 5 percent responsible, and the jaywalker 90 percent to blame.

LEGAL PROCEEDINGS:

In 2005, the Monica and Luis Acosta, Ms. Acosta's children, brought a wrongful death action against Miami-Dade County based on the alleged negligence of the MTA employee, Mr. Arrieta. The action was filed in the circuit court in Miami-Dade County.

The case was tried before a jury in or around November 2007. The jury returned a verdict awarding Monica and Luis \$3 million each for pain and suffering. As mentioned above, the

jury apportioned 100 percent the fault for Ms. Acosta's death to the bus driver, finding specifically that neither the jaywalker, the SUV driver, nor Ms. Acosta herself were in any way negligent in causing Ms. Acosta's death. On November 8, 2007, trial court entered a judgment against Miami-Dade County in accordance with the jury's verdict.

The county appealed the judgment. In April 2010, while the appeal was pending before the Third District Court, the parties agreed to a settlement of the case, under which the county, in exchange for a release of liability, would: (a) pay \$200,000 to the claimants (which it since has done); (b) dismiss the appeal; and (c) support a claim bill in the amount of \$940,000.

Upon the county's payment of \$200,000, the claimants received net proceeds of \$98,237.30, after deductions for attorneys' fees (\$50,000) and costs (\$51,762.70).

CLAIMANTS' ARGUMENTS:

Miami-Dade County is vicariously liable for the negligence of its employee, Mr. Arrieta, who breached the duty of a common carrier to exercise the highest degree of care consistent with the practical operation of the bus by:

- Failing to wait for Ms. Acosta to take a seat before pulling away from the bus stop;
- Failing to pay attention to his surroundings while driving; and
- Slamming the brakes and making a sudden, violent stop.

RESPONDENT'S POSITION:

The county supports a claim bill in the amount of \$940,000. If the claim bill were enacted, the county would satisfy the award using the operating funds of the MTA.

CONCLUSIONS OF LAW:

As provided in section 768.28, Florida Statutes (2010), sovereign immunity shields Miami-Dade County against tort liability in excess of \$200,000 per occurrence.

The operator of a bus system is vicariously liable for any negligent act committed by a driver whom it employs, provided the act is within the scope of the driver's employment. See, e.g., Metro. Dade Cnty. v. Asusta, 359 So. 2d 58, 59 (Fla. 3d DCA 1978); Miami Transit Co. v. Ford, 159 So. 2d 261 (Fla. 3d DCA

1964). Mr. Arrieta was the county's employee and was clearly acting within the scope of his employment at the time of the accident in question. Accordingly, the negligence of Mr. Arrieta, if any, is attributable to the county.

As a general rule, the duty of a common carrier is "to exercise the highest degree of care consistent with the practical operation of the bus." Jacksonville Coach Co. v. Rivers, 144 So. 2d 308, 310 (Fla. 1962). That the bus stopped suddenly, however, is insufficient, without more, to establish negligence on the part of the driver, as the Florida Supreme Court announced in Rivers:

Ruling out stops of extraordinary violence, not incidental to ordinary travel, as inapplicable to the stop which occurred here, the sudden stopping of the bus was not a basis for a finding that the bus was negligently operated, in the absence of other evidence, relating to the stop, of some act of commission or omission by the driver which together with the 'sudden' stop would suffice to show a violation of the carrier's duty. This is so because a sudden or abrupt stop, which could be the result of negligent operation, could as well result from conditions and circumstances making it entirely proper and free of any negligence.

Id. (emphasis added; reinstating directed verdict in favor of defense; quoting Blackman v. Miami Transit Co., 125 So. 2d 128, 130 (Fla. 3d DCA 1960)).

Here, the evidence establishes that the stop in question, while sudden and unexpected, was not extraordinarily violent and was incidental to ordinary travel, inasmuch as making a sudden stop in traffic, unexpectedly, is commonly understood to be one of the recurring inconveniences (and risks) of driving a motor vehicle. The evidence, moreover, does not establish that the driver failed to pay attention to his surroundings; rather, as the videos show, Mr. Arrieta reacted prudently and reasonably to an unexpected situation, namely the slowing of the SUV (which had just pulled ahead of the

bus) to avoid hitting a jaywalker who was standing in the middle of the road, in traffic.

The question whether the driver should have waited for Ms. Acosta to take a seat before putting the bus in motion is somewhat closer. Florida law, however, does not generally require that a driver wait for passengers to be seated before proceeding, although such a duty might arise where the driver prevents the passenger from taking a seat, Ginn v. Broward Cnty. Transit, 396 So. 2d 804, 806 (Fla. 4th DCA 1981), or reasonably could have anticipated the need to make a sudden stop, Metro. Dade Cnty. V. Asusta, 359 So. 2d 58, 60 (Fla. 3d DCA 1978). Indeed, courts have entered judgments as a matter of law against plaintiffs who have fallen on moving buses while on their way to a seat. See, e.g., Peterson v. Cent. Fla. Reg'l Transp., 769 So. 2d 418, 421 (Fla. 5th DCA 2000)(affirming directed verdict in favor of bus operator, where plaintiff, who was carrying a large, rain-soaked bag, was injured in fall on bus while walking down a wet aisle to take a seat in the back); Artigas v. Allstate Ins. Co., 541 So. 2d 739, 740(Fla. 3d DCA 1989)(affirming summary judgment in favor of bus operator because, although plaintiff had fallen after boarding bus while on her way to seat, standard of care was not violated); Miami Transit Co. v. Ford, 159 So. 2d 261 (Fla. 3d DCA 1964)(bus operator entitled to JNOV where plaintiff, who had been proceeding to a seat, fell when bus made a sudden, but nonviolent, stop).

Claimants argue that the MTA's Procedures Manual required the driver to wait for Ms. Acosta to take a seat before starting to move, but this is not accurate. The manual requires the driver to wait only when the passenger is "an elderly person, customer with a disability, a person holding a child, or a person with arms full of packages." Ms. Acosta was none of these. Otherwise, the driver is instructed to "be careful not to make a sudden start or stop" when passengers are standing in the aisle or walking to a seat. Here, the evidence fails to prove that the driver was not being careful; rather, Mr. Arrieta was required to stop suddenly because of an unexpected situation over which he had no control and could not reasonably have anticipated. In any event, the Procedures Manual does not fix the standard of care. See Artigas, 541 So. 2d at 740 n.1.

Based on the foregoing legal principles, as applied to the evidence presented in the case, the undersigned makes the ultimate determination that the driver was not negligent, in that

he did not breach the standard of care owed to a passenger when he stopped his bus to avoid rear-ending an SUV, which had slowed suddenly to avoid striking a jaywalker who was standing in the middle of traffic.

ATTORNEYS FEES:

Section 768.28(8), Florida Statutes, provides that "[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement." Claimants' attorney, Judd G. Rosen, Esquire, has submitted an affidavit attesting that all attorney's fees, lobbying fees, and costs will be paid in accordance with the limitations specified in the claim bill.

SPECIAL ISSUES:

If enacted in its current form, the claim bill would direct that the entire judgment amount of \$6 million be paid to Ms. Acosta's children. Thus, the bill needs to be amended to conform to the parties' settlement agreement, pursuant to which claimants have agreed to accept the smaller sum of \$940,000.

At the time of her death in November 2004, Ms. Acosta was a citizen of Venezuela. She had come into the U.S. in July 2003 on a Non-Immigrant B2 (Visitor for Pleasure) Visa, which expired on January 22, 2004.

Monica and Luis Acosta are citizens of Venezuela. Monica Cantillo Acosta, who was in the U.S. on a Non-Immigrant B2 (Visitor for Pleasure) Visa for some period of time, had returned to Venezuela to attend school before her mother's death, apparently without having overstayed her visa. Luis Acosta, who was a teenager at the time of his mother's death, was in the U.S. in November 2004 on a Non-Immigrant B2 (Visitor for Pleasure) Visa, which had expired on June 18, 2004.

GENERAL CONCLUSIONS:

This sad case arises out of a freak accident, which tragically cost Ms. Acosta her life. Clearly her children have suffered a grievous loss—one for which, in a perfect world, they would be richly compensated. The problem here is that the party who is mostly to blame for Ms. Acosta's death, the negligent jaywalker, was not identified. Nor was the driver of the SUV identified; yet that person, too, rightfully bears a smaller, but nontrivial, share of the fault. Although the bus driver's (and through him the county's) fair share of the blame falls in the range from 0 percent to 5 percent (and at the bottom end of

the range, in the undersigned's estimation), the jury decided to make the county pay the entire loss, assigning 100 percent of the fault to the bus driver. This was unfair and unsupportable based on the facts and law. The county's financial responsibility to the plaintiffs should not exceed \$300,000 (5 percent of \$6 million). Having paid \$200,000, the county, at a minimum, already has satisfied two-thirds of its maximum liability—and probably has overpaid.

That said, the county did agree to support a claim bill in the amount of \$940,000. This, in itself, is a compelling reason to support the bill, and should be given great weight. Nevertheless, the undersigned concludes that, on balance, the present settlement, if consummated via approval of this claim bill, would not be a responsible use of taxpayer money.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 50 (2012) be reported UNFAVORABLY.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Ellyn Setnor Bogdanoff
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

By Senator Legg

17-00069-15

201564__

A bill to be entitled

An act for the relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, the surviving children of Nhora Acosta, by Miami-Dade County; providing for an appropriation to compensate them for the wrongful death of their mother, Ms. Acosta, due to injuries sustained as a result of the negligence of a Miami-Dade County bus driver; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on November 12, 2004, at approximately 4:16 p.m., Nhora Acosta entered Miami-Dade County bus number 04142 at a stop on SW 8th Street in Miami, paid the driver, and tried to find a seat on the crowded bus, and

WHEREAS, while Ms. Acosta walked toward the rear of the bus in search of a seat, the bus driver, ignoring her safety and failing to appropriately anticipate the stop-and-go traffic patterns on the busy street, accelerated so quickly that, in order to avoid a collision with another vehicle, he suddenly slammed on the brakes, and

WHEREAS, the sudden change in velocity caused Ms. Acosta to fall and strike her head on an interior portion of the bus, and

WHEREAS, as a result of the fall, Ms. Acosta suffered a severe closed head injury and massive brain damage, including a right subdural hemorrhage, a left dural hemorrhage, diffused cerebral edema, and basilar herniations, and

WHEREAS, Ms. Acosta was rushed to the trauma resuscitation bay at Jackson Memorial Hospital in a comatose state, was placed

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

17-00069-15

201564__

on a ventilator, underwent various procedures to no avail, and was pronounced dead at 2:05 p.m. the next day, and

WHEREAS, Ms. Acosta was a 54-year-old single mother of two children, Monica and Luis, who had been raised exclusively by their mother, and because of her death, her children were left orphaned, and

WHEREAS, Monica and Luis loved their mother, their only parent, dearly and have lost her support, love, and guidance and have suffered intense mental pain due to her untimely death, as a result of the negligence of the Miami-Dade bus driver, and

WHEREAS, on November 5, 2007, a Miami-Dade County jury rendered a verdict and found the Miami-Dade County bus driver 100 percent negligent and responsible for the wrongful death of Ms. Acosta, and determined the damages of Monica and Luis to be \$3 million each, and

WHEREAS, the parties have subsequently settled this matter for \$1.14 million, and Miami-Dade County has paid the claimants \$200,000 under the statutory limits of liability set forth in s. 768.28, Florida Statutes, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. Miami-Dade County is authorized and directed to appropriate from funds of the county not otherwise appropriated and to draw a warrant in the sum of \$470,000, payable to Monica Cantillo Acosta, and a warrant in the sum of \$470,000, payable to Luis Alberto Cantillo Acosta, as compensation for the

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

17-00069-15

201564__

59 wrongful death of their mother, Nhora Acosta.

60 Section 3. The amount paid by Miami-Dade County pursuant to
61 s. 768.28, Florida Statutes, and the amounts awarded under this
62 act are intended to provide the sole compensation for all
63 present and future claims arising out of the factual situation
64 described in this act which resulted in the death of Ms. Acosta.
65 The total amount paid for attorney fees, lobbying fees, costs,
66 and other similar expenses relating to this claim may not exceed
67 25 percent of the total amount awarded under this act.

68 Section 4. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG
17th District

Legg.John.web@FLSenate.gov

February 11, 2015

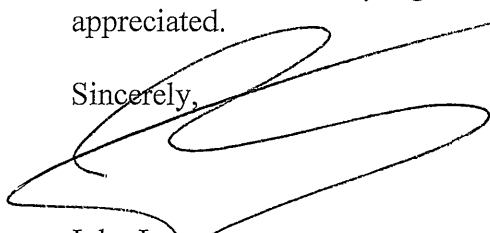
The Honorable Miguel Diaz de la Portilla
Committee on Judiciary Chair
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

RE: SB 64 - Relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta by Miami-Dade County

Dear Chair Diaz de la Portilla:

SB 64 has been referred to your committee. I respectfully request that it be placed on the Committee on Judiciary Agenda, at your convenience. Your leadership and consideration are appreciated.

Sincerely,



John Legg
State Senator, District 17

cc: Tom Cibula, Staff Director

JL/jb

REPLY TO:

- 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG

17th District

Legg.John.web@FLSenate.gov

March 5, 2015

The Honorable Miguel Diaz de la Portilla
Committee on Judiciary Chair
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 0064 - Relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta by Miami-Dade County

Dear Chair Diaz de la Portilla:

SB 0064 - Relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta by Miami-Dade County has been referred to your committee. I respectfully request that it be placed on the Committee on Judiciary Agenda, at your convenience. Your leadership and consideration are appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "John Legg".

John Legg
State Senator, District 17

cc: Tom Cibula, Staff Director

JL/jb

REPLY TO:

- 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG

17th District

Legg.John.web@FLSenate.gov

April 6, 2015

The Honorable Miguel Diaz de la Portilla
Senate Committee on Judiciary, Chair
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Diaz de la Portilla:

Senate Bill 64, related to Relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta by Miami-Dade County, is on the Committee on Judiciary agenda for April 7, 2015. I will be at the Committee on Ethics and Elections meeting and I will be unable to attend.

Please recognize my Legislative Assistant, Jim Browne, to present SB 64 on my behalf. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John Legg", with a long horizontal stroke extending to the right.

John Legg
State Senator, District 17

cc: Tim Cibula, Staff Director
Shirley Proctor, Administrative Assistant

REPLY TO:

- 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 312

INTRODUCER: Children, Families, and Elder Affairs Committee and Senators Detert and Gaetz

SUBJECT: Restitution for Juvenile Offenses

DATE: April 6, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	Preston	Hendon	CF	Fav/CS
3.	Brown	Cibula	JU	Pre-meeting
4.			FP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 312 adopts a uniform set of conditions of restitution for children whose criminal cases are disposed of in delinquency court. The same conditions apply regardless of whether the child is adjudicated delinquent or adjudication is withheld.

The bill also revises provisions on parental liability for restitution by:

- Absolving a parent or guardian of liability if the court finds that the current offense is the child’s first referral to delinquency court; and
- Authorizing liability to be imposed only on parents and guardians who have current custody and parental responsibility of a child who caused a loss or damage; and
- Authorizing payment plans for restitution by parents who are unable to afford a single, lump-sum payment.

The bill, however, provides that the following entities are not liable for damages or losses caused by child: the Department of Children and Families, a foster parent, the community-based care lead agency supervising placement of the child, or a residential child-caring agency or family foster home.

II. Present Situation:

Restitution

Juvenile Cases in which the Court enters an Adjudication of Delinquency

A court may order children who are adjudicated delinquent of a crime into a probation program.¹ If the court does order probation for the child, the probation program *must* include a penalty component such as:

- Restitution in money or in kind;
- Community service;
- A curfew;
- Revocation or suspension of the child’s driver license; or
- Other appropriate punishment that is non-residential.²

The court may alternatively order restitution at a disposition hearing as part of community-based sanctions or before the child’s release from a commitment program.³

The court determines the amount and manner of restitution.⁴ In so doing, the court may order the child to pay restitution to the victim for any damage⁵ or loss caused by the child’s offense.⁶ The amount of restitution ordered is limited to an amount that the child and the parent or guardian could reasonably be expected to pay.⁷

Before entering an order of restitution, the court must first conduct a restitution hearing addressing the child’s ability to pay and the amount of restitution to which the victim is entitled.⁸ A restitution hearing is not required if the child previously entered into an agreement to pay⁹ or has waived his or her right to attend a restitution hearing.¹⁰ If restitution is ordered by the court, the amount of restitution may not exceed an amount the child or his parents or guardian¹¹ can reasonably be expected to pay.¹²

¹ Section 985.435(1), F.S.

² Section 985.435(2), F.S.

³ Section 985.437(1), F.S.

⁴ *Id.*

⁵ “Any damage” has been interpreted by Florida’s courts to include damage for pain and suffering, *C.W. v. State*, 655 So. 2d 87, 89 (Fla. 1995). “Pain and suffering has long been recognized as a compensable damage in Florida.”

⁶ The damage or loss must be directly or indirectly related to the child’s offense or criminal episode, *L.R.L. v. State*, 9 So. 3d 714 (Fla. 2d DCA 2009).

⁷ Section 985.437(2), F.S.

⁸ *J.G. v. State*, 978 So. 2d 270, 272 (Fla. 4th DCA 2008). If a court intends to establish an amount of restitution based solely on evidence adduced at a hearing of a charge of delinquency, the juvenile must be given notice.

⁹ *T.P.H. v. State*, 739 So. 2d 1180, 1181 (Fla. 4th DCA 1999).

¹⁰ *T.L. v. State*, 967 So. 2d 421, 421 (Fla. 1st DCA 2007).

¹¹ Section 985.03(28), F.S., defines a “legal custody or guardian” as a legal status created by a court order or letter of guardianship which vests in a custodian of the person or guardian, as an agency or individual, the right to have physical custody of the child and the right and duty to protect, train, and discipline the child and provide food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.

¹² Section 985.437(2), F.S.

Restitution may be satisfied by monetary payments, with a promissory note cosigned by the child's parent or guardian, or in kind.¹³ However, a parent or guardian may be absolved of liability for restitution in his or her child's criminal case if, after a hearing, the court finds that the parent or guardian has made diligent and good faith efforts to prevent the child from delinquency.¹⁴

The clerk of the circuit court receives and dispenses restitution payments. If restitution is not made, the clerk must notify the court.¹⁵ The Department of Juvenile Justice (DJJ) monitors restitution payments for children under the supervision of the DJJ.¹⁶ The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or until the court orders otherwise.¹⁷ According to the DJJ, many jurisdictions do not terminate the department's supervision until the child's restitution obligation is paid.¹⁸

If a child or parent fails to pay court-ordered restitution, a civil lien may be placed upon the real property of the child or parent.¹⁹ The court may transfer a restitution order to a collection court or a private collection agent to collect unpaid restitution.²⁰

Juvenile Cases in which the Court enters a Withheld of Adjudication

If a court withholds an adjudication of delinquency for a child charged with a crime, the court may still order the child into a probation program. However, unlike cases in which a child is adjudicated delinquent, a court is not required to order a penalty as a condition of a program if adjudication is withheld. Nevertheless, penalties may include:

- Restitution, in money or in kind;
- Community service;
- A curfew;
- Urine monitoring;
- Revocation or suspension of the driver license of the child; or
- Other appropriate punishment that is nonresidential.²¹

¹³ Section 985.437(2), F.S. Similar to the process for juveniles, a parent or guardian cannot be ordered to pay restitution for offenses committed by their minor child without the court providing the parent meaningful notice, an opportunity to be heard, and a determination of the parents' ability to pay. *See S.B.L. v. State*, 737 So. 2d 1131, 1132-33 (Fla. 1st DCA 1999) (holding that the trial court violated the mother's due process right by ordering her to pay restitution without affording her meaningful opportunity to be heard at the restitution hearing); *A.T. v. State*, 706 So. 2d 109, 109 (Fla. 2d DCA 1998) (trial court erred by ordering the juvenile and her mother to pay restitution without making a determination of either's ability to do so); and *C.D.D. v. State*, 684 So. 2d 866, 867 (Fla. 2nd DCA 1996) (holding that the trial court was required to consider the juvenile's and mother's ability to pay before imposing a restitution order).

¹⁴ Section 985.437(4), F.S.

¹⁵ Section 985.437(3), F.S.

¹⁶ Department of Juvenile Justice, *2015 Bill Analysis for SB 312* (on file with the Senate Judiciary Committee).

¹⁷ Section 985.437(5), F.S.

¹⁸ Department of Juvenile Justice, *supra* note 16, at 2.

¹⁹ Section 985.0301(5)(d), F.S., provides that the terms of restitution orders in juvenile criminal cases are subject to s. 775.089(5), F.S. That section provides that a restitution order may be enforced in the same manner as a judgment in a civil action.

²⁰ Section 985.045(5), F.S.

²¹ Section 985.35(4)(a), F.S.

III. Effect of Proposed Changes:

This bill provides the same conditions of restitution for cases in which a child is adjudicated delinquent as for cases in which adjudication is withheld.

The court is authorized to set up a payment plan for restitution if the child and the parent or guardian are unable to satisfy restitution in a lump-sum payment. Allowing children and parents to pay restitution through a payment plan may make it more likely that a victim will be fully compensated.

The bill provides that responsibility for restitution may be imposed only on parents or guardians who have current custody and parental responsibility of the child who caused the damages or losses. However, these entities and individuals who otherwise might be a child's guardian are not liable for restitution: the DCF, a foster parent with whom the child is placed, the community-based care lead agency supervising the placement of the child pursuant to a contract with the DCF, or a residential child-caring facility or family foster home.

Under current law, a parent or guardian who has made diligent and good faith efforts to prevent a child's delinquency are absolved from liability for restitution. Under the bill, this ground for avoiding liability is limited to circumstances in which the child is making his or her first appearance to the delinquency system. However, a parent or guardian is not liable for damages or losses if a parent or guardian is also the victim.

This bill takes effect July 1, 2015.

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

This bill does not appear to require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 10 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

This bill may provide greater potential for victims to receive all or a portion of restitution. Parents ordered to pay restitution on behalf of a child may avoid a civil lien if they cannot pay restitution in a lump-sum as the bill authorizes payment plans.

C. Government Sector Impact:

The Office of the State Courts Administrator indicates that judicial or workload impact cannot be determined. However, any increase in the number of hearings to impose restitution will likely result in additional hearings to address non-payment of restitution.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.35, 985.437, and 985.513.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Children, Families, and Elder Affairs on March 26, 2015:**

- Adds that facilities registered under s. 409.176, F.S., are not considered a guardian for purposes of being responsible for restitution.
- Requires that the court may only order restitution to be paid by parents or guardians who have current custody or parental responsibility.

B. Amendments:

None.

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

²² Office of the State Courts Administrator, *2015 Judicial Impact Statement for SB 312* (on file with the Senate Committee on Judiciary).

By the Committee on Children, Families, and Elder Affairs; and
Senators Detert and Gaetz

586-02928-15

2015312c1

1 A bill to be entitled
2 An act relating to restitution for juvenile offenses;
3 amending s. 985.35, F.S.; conforming provisions to
4 changes made by the act; amending s. 985.437, F.S.;
5 requiring a child's parent or guardian, in addition to
6 the child, to make restitution for damage or loss
7 caused by the child's offense; providing for payment
8 plans in certain circumstances; authorizing the parent
9 or guardian to be absolved of liability for
10 restitution in certain circumstances; authorizing the
11 court to order restitution to be paid only by the
12 parents or guardians who have current custody and
13 parental responsibility of the child; specifying that
14 the Department of Children and Families, foster
15 parents, a facility registered under s. 409.176, F.S.,
16 and specified agencies contracted with the department
17 are not guardians for purposes of restitution;
18 amending s. 985.513, F.S.; removing duplicative
19 provisions authorizing the court to require a parent
20 or guardian to be responsible for any restitution
21 ordered against the child; providing an effective
22 date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Paragraph (a) of subsection (4) of section
27 985.35, Florida Statutes, is amended to read:

28 985.35 Adjudicatory hearings; withheld adjudications;
29 orders of adjudication.-

Page 1 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

586-02928-15

2015312c1

30 (4) If the court finds that the child named in the petition
31 has committed a delinquent act or violation of law, it may, in
32 its discretion, enter an order stating the facts upon which its
33 finding is based but withholding adjudication of delinquency.

34 (a) Upon withholding adjudication of delinquency, the court
35 may place the child in a probation program under the supervision
36 of the department or under the supervision of any other person
37 or agency specifically authorized and appointed by the court.
38 The court may, as a condition of the program, impose as a
39 penalty component restitution in money or in kind to be made by
40 the child and the child's parent or guardian as provided in s.
41 985.437, community service, a curfew, urine monitoring,
42 revocation or suspension of the driver license of the child, or
43 other nonresidential punishment appropriate to the offense, and
44 may impose as a rehabilitative component a requirement of
45 participation in substance abuse treatment, or school or other
46 educational program attendance.

47 Section 2. Present subsection (5) of section 985.437,
48 Florida Statutes, is renumbered as subsection (7), subsections
49 (1), (2), and (4) are amended, and new subsections (5) and (6)
50 are added to that section, to read:

51 985.437 Restitution.-

52 (1) Regardless of whether adjudication is imposed or
53 withheld, the court that has jurisdiction over a ~~an~~ adjudicated
54 ~~delinquent~~ child may, by an order stating the facts upon which a
55 determination of a sanction and rehabilitative program was made
56 at the disposition hearing, order the child and the child's
57 parent or guardian to make restitution in the manner provided in
58 this section. This order shall be part of the child's probation

Page 2 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

586-02928-15

2015312c1

59 program to be implemented by the department or, in the case of a
60 committed child, as part of the community-based sanctions
61 ordered by the court at the disposition hearing or before the
62 child's release from commitment.

63 (2) If the court orders restitution, the court ~~shall may~~
64 order the child and the child's parent or guardian to make
65 restitution in money, through a promissory note ~~assigned by the~~
66 ~~child's parent or guardian,~~ or in kind for any damage or loss
67 caused by the child's offense in a reasonable amount or manner
68 to be determined by the court. When restitution is ordered by
69 the court, the amount of restitution may not exceed an amount
70 the child and the parent or guardian could reasonably be
71 expected to pay or make. If the child and the child's parent or
72 guardian are unable to pay the restitution in one lump-sum
73 payment, the court may set up a payment plan that reflects their
74 ability to pay the restitution amount.

75 (4) The parent or guardian may be absolved of liability for
76 restitution under this section if:

77 (a) After a hearing, the court finds that it is the child's
78 first referral to the delinquency system and ~~A finding by the~~
79 court, ~~after a hearing,~~ that the parent or guardian has made
80 diligent and good faith efforts to prevent the child from
81 engaging in delinquent acts; or

82 (b) The victim entitled to restitution as a result of
83 damage or loss caused by the child's offense is that child's
84 absolves the parent or guardian ~~of liability for restitution~~
85 under this section.

86 (5) The court may only order restitution to be paid by the
87 parents or guardians who have current custody and parental

586-02928-15

2015312c1

88 responsibility.

89 (6) For purposes of this section, the Department of
90 Children and Families, a foster parent with whom the child is
91 placed, or the community-based care lead agency supervising the
92 placement of the child pursuant to a contract with the
93 Department of Children and Families, or a facility registered
94 under s. 409.176 is not considered a guardian responsible for
95 restitution for the delinquent acts of a child who is found to
96 be dependent as defined in s. 39.01(15).

97 Section 3. Subsection (1) of section 985.513, Florida
98 Statutes, is amended to read:

99 985.513 Powers of the court over parent or guardian at
100 disposition.—

101 (1) The court that has jurisdiction over an adjudicated
102 delinquent child may, by an order stating the facts upon which a
103 determination of a sanction and rehabilitative program was made
104 at the disposition hearing,+

105 ~~(a)~~ order the child's parent or guardian, together with the
106 child, to render community service in a public service program
107 or to participate in a community work project. In addition to
108 the sanctions imposed on the child, the court may order the
109 child's parent or guardian to perform community service if the
110 court finds that the parent or guardian did not make a diligent
111 and good faith effort to prevent the child from engaging in
112 delinquent acts.

113 ~~(b) Order the parent or guardian to make restitution in~~
114 ~~money or in kind for any damage or loss caused by the child's~~
115 ~~offense. The court may also require the child's parent or legal~~
116 ~~guardian to be responsible for any restitution ordered against~~

586-02928-15

2015312c1

117 ~~the child, as provided under s. 985.437. The court shall~~
118 ~~determine a reasonable amount or manner of restitution, and~~
119 ~~payment shall be made to the clerk of the circuit court as~~
120 ~~provided in s. 985.437. The court may retain jurisdiction, as~~
121 provided under s. 985.0301, over the child and the child's
122 parent or legal guardian whom the court has ordered to pay
123 restitution until the restitution order is satisfied or the
124 court orders otherwise.

125 Section 4. This act shall take effect July 1, 2015.



The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 26, 2015

I respectfully request that **Senate Bill #312**, relating to Restitution for Juvenile Offenses, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script, reading "Nancy C. Detert".

Senator Nancy C. Detert
Florida Senate, District 28

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 736

INTRODUCER: Regulated Industries Committee and Senators Stargel and Detert

SUBJECT: Residential Properties

DATE: April 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 736 revises requirements for estoppel certificates for condominium, cooperative, and homeowners' associations. When an ownership interest in a condominium unit, cooperative unit, or parcel in a homeowners' association is transferred, the new owner is jointly and severally liable with the previous owner for unpaid assessments owed to a condominium or homeowners' association. Unpaid assessments may also become a lien on the property. To protect against undisclosed financial obligations and to transfer title that is free of any lien or encumbrance, buyers may request that the seller provide an estoppel certificate from the condominium or homeowners' association. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit or parcel owner as of a specified date.

The bill:

- Reduces the period of time in which an association must respond to a request for an estoppel certificate from 15 days to 10 days;
- Requires that estoppel certificates be delivered by mail, hand, or electronic means, and dated as of the date it is delivered and be valid for 30 days;
- Requires that estoppel certificates state all assessments and other moneys owed to the association by the unit owner, as reflected in the official records of the association, through at least 30 days after the date of the estoppel certificate;
- Provides that an association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person and their successors and assigns who in good faith rely upon the certificate, or if the association fails to respond to a written request for a certificate.

The bill deletes the right of condominium unit owners and parcel owners in a homeowners' association to compel compliance with the provisions governing the issuance of an estoppel by bringing a summary procedure pursuant to s. 51.011, F.S.

For cooperative associations, the bill authorizes the cooperative associations to charge a fee for the estoppel certificate if the fee is established by a written resolution adopted by the board or provided by a written management, book, keeping, or maintenance contract. This provision is comparable to authority provided to condominium and homeowners' associations.

II. Present Situation:

Condominium

A condominium is a “form of ownership of real property created pursuant to [ch. 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.”¹ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.² A declaration is like a constitution in that it:

creates the condominium and ‘strictly governs the relationships among the condominium units 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.’³

A declaration “may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.”⁴ A declaration of condominium may be amended as provided in the declaration.⁵ If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of the owners of not less than two-thirds of the units.⁶ Condominiums are administered by a board of directors referred to as a “board of administration.”⁷

Section 718.103(3), F.S., defines the term “association property” to mean:

that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.

Section 718.103(8), F.S., defines the term “common elements” to mean the portions of the condominium property not included in the units.

Section 718.103(13), F.S., defines the term “condominium property” to mean:

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

⁴ Section 718.104(5), F.S.

⁵ See s. 718.110(1)(a), F.S.

⁶ Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

⁷ Section 718.103(4), F.S.

the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

Section 718.103(16), F.S., defines a developer as one “who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business” There are two classes of developers: those who create the condominium by executing and recording the condominium documents and those who offer condominium units for sale or lease in the ordinary course of business. Current law excludes a bulk assignee and a bulk buyer from the definition of developer.

Cooperative Associations

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

that 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.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit’s occupants receive an exclusive right to occupy the unit. 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.⁸

Homeowners’ Associations

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners’ associations. These laws protect the rights of association members without unduly impairing the ability of the associations to perform their functions.⁹

A “homeowners’ association” is defined as a “Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and 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.”¹⁰ Unless specifically stated to the contrary, homeowners’ associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.¹¹

⁸ See ss. 719.106(1)(g) and 719.107, F.S.

⁹ See s. 720.302(1), F.S.

¹⁰ Section 720.301(9), F.S.

¹¹ Section 720.302(5), F.S.

Homeowners' associations are administered by a board of directors whose members are elected.¹² The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.¹³

Assessments and Foreclosures

The liability provisions in condominium, cooperative, and homeowners' associations for unpaid assessments for present and previous unit and parcel owners are comparable.

Section 718.103(1), F.S., defines the term "assessment" to mean "a share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner."¹⁴

"Special assessment" is defined to mean "any assessment levied against a unit owner other than the assessment required by a budget adopted annually."¹⁵

An owner is jointly and severally liable with the previous owner for all unpaid assessments that come due up to the time of transfer of title.¹⁶ This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.¹⁷

In a condominium association, if a first mortgagee, (e.g., the mortgage lending bank) or its successor or assignee, acquires title to a condominium unit by foreclosure or by deed in lieu of foreclosure, the first mortgagee's liability for unpaid assessments is limited to the amount of assessments that came due during the 12 months immediately preceding the acquisition of title or one percent of the original mortgage debt, whichever is less.¹⁸ However, this limitation applies only if the first mortgagee joined the association as a defendant in the foreclosure action.¹⁹ This gives the association the right to defend its claims for unpaid assessments in the foreclosure proceeding.

Section 720.3085(2), F.S., provides a comparable limitation of liability relating to parcels in homeowners' associations. Chapter 719, F.S., does not provide a comparable provision for cooperative associations.

Regarding the accrual of interest on unpaid assessments in condominium, cooperative, and homeowners' associations, unpaid assessments and installments on assessments accrue interest at

¹² See ss. 720.303 and 720.307, F.S.

¹³ See ss. 720.301 and 720.303, F.S.

¹⁴ See also s. 719.103(1), F.S., for a comparable definition of "assessment" in a cooperative association, and s. 720.301(1), F.S., for a comparable definition of "assessment" in a homeowners' association.

¹⁵ Section 718.103(24), F.S.; see also s. 719.103(23), F.S., for a comparable definition of "assessment" in a cooperative association,

¹⁶ Section 718.116(1)(a), F.S., s. 719.108(1), F.S., and s. 720.3085(2)(b), F.S.

¹⁷ *Id.* The term "without prejudice" means "without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party." BLACK'S LAW DICTIONARY 770 (2d pocket ed. 2001).

¹⁸ Sections 718.116(1)(b), F.S.

¹⁹ *Id.*

the rate provided in the governing documents from the due date until paid. The rate may not exceed the rate allowed by law.²⁰ If no rate is specified in the declaration, the interest accrues at the rate of 18 percent per year. The association may also charge an administrative late fee of up to the greater of \$25 or 5 percent of each installment of the assessment for each delinquent installment for which the payment is late. Payments are applied first to the interest accrued, then the administrative late fee, then to any reasonable costs and attorney fees incurred in collection, and then to the delinquent assessment.²¹

Estoppel Certificates

A community association is required to keep accounting records for the association and separate accounting records.²² All accounting records must be kept for at least 7 years. The accounting records must be accurate, itemized, and detailed records of all receipts and expenditures. They must contain a current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.²³

Within 15 days after receiving a written request from an owner or his or her designee, or a mortgagee or his or her designee, the association is required to provide a certificate signed by an officer or agent of the association stating all assessments and other moneys owed to the association by the owner with respect to the unit or parcel.²⁴

The certificate protects any person other than the owner who relies upon it.²⁵

The authority to charge a fee for the certificate must be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract. The fee is payable upon the preparation of the certificate.

In a condominium or homeowners' association, if the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur, the preparer of the certificate must refund the fee to a payor that is not a unit-owner within 30 days after receipt of the request for refund. A written request for a refund must be made no later than 30 days after the closing date for which the certificate was sought and include reasonable documentation that the sale did not occur.²⁶

The refund is the obligation of the owner, and the association may collect it from that owner in the same manner as an assessment.²⁷

²⁰ Section 687.02(1), F.S., prohibits as usurious interest rates that are higher than the equivalent of 18 percent per annum simple interest.

²¹ See s. 718.116(3), F.S., s. 719.108(3), F.S., and s. 720.3085(3), F.S.

²² Section 718.111(12)(a)11, s. 719.104(2)(a)9, F.S., and s. 720.303.(4)(j), F.S.

²³ *Id.*

²⁴ Section 718.116(8), F.S., s. 719.108(6), F.S., and s. 720.30851, F.S.

²⁵ Section 718.116(8)(a), F.S., s. 719.108(6), F.S., and s. 720.30851(1), F.S.

²⁶ Section 718.116(8)(d), F.S., and s. 720.30851(3), F.S.

²⁷ Section 718.116(8)(d), F.S., and s. 720.30851(3), F.S.

After a series of public meetings in 2014, the Community Association Living Study Council,²⁸ by unanimous vote, made the following recommendations to the Legislature:

- That a reasonable cap be established for estoppel certificate fees and that such fees be tiered;
- The amount of the fee should depend on whether or not the owner is current in fees, delinquent in fees, or if it is a bulk purchase.²⁹

A condominium unit or parcel owner in a homeowners' association may compel compliance with the provisions governing the issuance of an estoppel certificate from a homeowners' or condominium association by bringing a summary procedure pursuant to s. 51.011, F.S.³⁰ The prevailing party is entitled to recover reasonable attorney fees.³¹ Current law does not provide a comparable provision for cooperative associations.

Cooperatives - Estoppel Certificates

Section 719.108(6), F.S., F.S., provides that, within 15 days after request by a unit owner or mortgagee, the association is required to provide a certificate stating all assessments and other moneys owed to the association by the unit owner with respect to the cooperative parcel. It provides that "any person other than the unit owner who relies upon such certificate shall be protected thereby." It permits the association or its authorized agent to charge a reasonable fee for the preparation of the certificate.

III. Effect of Proposed Changes:

The bill amends ss. 718.116(8), 719.108(6), and 720.30851, F.S., to revise the requirements for estoppel certificates issued by condominium, cooperative, and homeowners' associations.

Form and Delivery of Estoppel Certificates

The bill reduces the time period in which an association must respond to a request for an estoppel certificate from 15 days to 10 days.

²⁸ The Community Association Living Study Council was created by the Legislature in 2008 to receive input from the public regarding issues of concern with respect to community association living and to advise the Legislature concerning revisions and improvements to the laws relating to community associations. The council consisted of 7 members appointed by the President of the Senate, the Speaker of the House of Representatives, and the Governor. An ex officio nonvoting member was appointed by the Director of the Division of Florida Condominiums, Timeshares, and Mobile Homes. The Council was abolished by the Legislature in 2014. See ch. 2014-133, s. 12, Laws of Fla.

²⁹ See Community Association Living Study Council, *Final Report*, March 31, 2014, available at <http://www.myfloridalicense.com/dbpr/lsc/documents/2014CALSCReport.pdf>.

³⁰ Sections 718.116(8)(b) and 720.30851(2), F.S.; Section 51.011, F.S., specifies a summary procedure for actions that specifically provide for this procedure by statute or rule. Under the summary procedure, all defenses of law or fact are required to be contained in the defendant's answer which must be filed within five days after service of process of the plaintiff's complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within five days after service of the counterclaim. (Fla. R. Civ. Pro. 1.140, requires an answer, including any counterclaims, within 20 days after service of the complaint.) No other pleadings are permitted, and all defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery and the procedure also provides for an immediate trial, if requested.

³¹ *Id.*

The bill requires that estoppel certificates from condominium and homeowners' associations:

- Be delivered by mail, hand, or electronic means;
- Be dated as of the date it is delivered;
- Be valid for at least 30 days; and
- State all assessments and other moneys owed to the association by the unit owner with respect to the unit, as reflected in the official records of the association, through at least 30 days after the date of the estoppel certificate.

The requirement that the estoppel certificate be dated as of the date delivered is unclear. It is not clear whether the applicable date is the date the certificate is sent or the date the certificate is received.

The bill provides that an association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person, and from that person's successors and assigns, who in good faith rely upon the certificate.

The bill deletes the provisions in ss. 718.116(8)(b) and 720.30851(2), F.S., which permit condominium unit owners and parcel owners in a homeowners' association to compel the issuance of an estoppel certificate by bringing a summary procedure pursuant to s. 51.011, F.S. However, the summary procedure is no longer necessary as an enforcement mechanism because, under the bill, the association waives any claim from any person, and from that person's successors and assigns, if it fails to deliver an estoppel certificate upon a written request from a unit owner or his or her designee, or a unit mortgagee or his or her designee, or any person and their successors and assigns who would have in good faith relied upon that certificate had it been so delivered.

The bill provides that when an estoppel certificate is requested in conjunction with the sale or refinancing of a unit or parcel, the fee and any supplemental fees are due and payable to an association no earlier than the closing and must be paid from the closing settlement proceeds. The bill prohibits the preparation and delivery of the estoppel certificate to be contingent on the payment of any other fees. The bill maintains the requirement in current law that, if the sale does not occur, the fee is the obligation of the owner and may be collected by an association in the same manner as an assessment. However, the bill increases from 30 days to 60 days after the delivery of the estoppel certificate for the sale to occur in order for the unit or parcel owner not to be obligated to pay the fee for the estoppel certificate if the sale does not occur.

The bill creates s. 719.108(6)(d), F.S., to authorize the cooperative associations to charge a fee for the estoppel certificate if the fee is established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract. This provision is comparable to authority provided to condominium and homeowners' associations in ss. 718.116(8)(d) and 720.30851(4), F.S., respectively.

Effective Date

The bill takes effect July 1, 2015.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill authorizes cooperative associations to charge a fee for the estoppel certificate if the fee is established by a written resolution adopted by the board or provided by a written management, book, keeping, or maintenance contract.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 718.116, 719.108 and 720.30851.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Regulated Industries on March 24, 2015:

The committee substitute (CS):

- Amends s. 719.108(6), F.S., to provide for the issuance of estoppel certificates by cooperative associations in the same manner as provided in the bill for condominium and homeowners' associations;
- Amends ss. 718.116(8) and 720.30851, F.S., to provide that the moneys owed are as reflected in the records maintained pursuant to ss. 718.111(12) and 720.303 (4), F.S., respectively;
- Amends s. 718.116(8)(a) and (b), F.S., and s. 720.30851(1), F.S., to provide that any waiver of claim extends to the successor and assigns of any person who in good faith relied on an estoppel certificate;
- Does not amend ss. 718.116(8)(b) and 720.30851(2), F.S., to provide that the waiver includes any claim for its lien against the unit or parcel, and any moneys owed to the association by the unit owner or parcel owner with respect to the unit or parcel for 40 days after the date of receipt of the request;
- Amends ss. 718.116(8)(c) and 720.30851(3), F.S., to decrease the time from 120 days to 60 days after the delivery of the estoppel certificate for the sale to occur in order for the unit or parcel owner not to be obligated to pay the fee for the estoppel certificate if the sale does not occur;
- Does not amend ss. 718.116(8)(c) and 720.30851(3), F.S., to provide a maximum fee of \$100 for the preparation and delivery of an estoppel certificate, and maximum fees of up to \$50 for specified events;
- Does not create ss. 718.116(8)(d) and 720.30851(4), F.S., to provide maximum fee amounts for simultaneous requests for the estoppel certificate for multiple units owned by the unit or parcel owner when there are no past due monetary obligations; and
- Creates s. 718.108(6)(d), F.S., to authorize the cooperative association to charge a fee for the estoppel certificate if the fee is established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract.

B. Amendments:

None.



712124

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (8) of section 718.116, Florida
Statutes, is amended to read:

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

(8) An association shall issue an estoppel certificate to a
unit owner or the unit owner's designee or a unit mortgagee or
the unit mortgagee's designee within 10 business 15 days after



712124

12 receiving a written request for the certificate. The estoppel
13 certificate must be delivered by mail, by hand delivery, or by
14 electronic means to the requester on the date of issuance.

15 (a) The estoppel certificate must contain all of the
16 following:

17 1. The date of issuance.

18 2. The amount of all assessments and other moneys owed to
19 the association by the unit owner for a specific unit on the
20 date of issuance. This amount is limited to amounts authorized
21 by statute to be recorded in the official records of the
22 association under s. 718.111(12).

23 3. The amount of any additional assessments and other
24 moneys that are scheduled to become due for each day after the
25 date of issuance for the 30-day or 35-day effective period of
26 the estoppel certificate. This amount is limited to amounts
27 authorized by statute to be recorded in the official records of
28 the association under s. 718.111(12). In calculating the amounts
29 that are scheduled to become due, the association may assume
30 that any delinquent amounts will remain delinquent during the
31 effective period of the estoppel certificate.

32 4. The amount of any fee charged by the association for
33 preparing and delivering the estoppel certificate. This fee is
34 in addition to any other amounts on the estoppel certificate.

35 5. The signature of an officer or agent of the association.

36 (b) An estoppel certificate that is delivered on the date
37 of issuance has a 30-day effective period. An estoppel
38 certificate that is mailed to the requester has a 35-day
39 effective period.

40 (c) An association waives the right to collect any moneys



712124

41 owed in excess of the amounts specified in the estoppel
42 certificate from any person who in good faith relies upon the
43 estoppel certificate and from the person's successors and
44 assigns. ~~therefor from a unit owner or his or her designee, or a~~
45 ~~unit mortgagee or his or her designee, the association shall~~
46 ~~provide a certificate signed by an officer or agent of the~~
47 ~~association stating all assessments and other moneys owed to the~~
48 ~~association by the unit owner with respect to the condominium~~
49 ~~parcel.~~

50 ~~(a) Any person other than the owner who relies upon such~~
51 ~~certificate shall be protected thereby.~~

52 ~~(d)~~ (b) A summary proceeding pursuant to s. 51.011 may be
53 brought to compel compliance with this subsection, and in any
54 such action the prevailing party is entitled to recover
55 reasonable attorney ~~attorney's~~ fees.

56 (e)1. ~~(e)~~ Notwithstanding any limitation on transfer fees
57 contained in s. 718.112(2)(i), an ~~the~~ association or its
58 ~~authorized~~ agent may charge a reasonable fee, not to exceed its
59 reasonable costs to prepare and deliver ~~for the preparation of~~
60 the estoppel certificate. However, the fee for the estoppel
61 certificate may not exceed \$100 if on the date the certificate
62 is issued, there are no delinquent amounts owed to the
63 association for the applicable unit. If delinquent amounts are
64 owed to the association for the applicable unit, the fee for the
65 estoppel certificate may not exceed \$300. The association may
66 not charge a fee for an estoppel certificate that is issued more
67 than 10 business days after it receives the request for the
68 certificate. ~~The amount of the fee must be included on the~~
69 ~~certificate.~~



712124

70 2. If the estoppel certificate is requested in conjunction
71 with the sale or refinancing of a unit, the fee for the
72 certificate shall be paid to the association from the closing or
73 settlement proceeds. If the closing does not occur within 60
74 days after the issuance of the estoppel certificate, the fee for
75 the certificate is the obligation of the unit owner, and the
76 association may collect the fee in the same manner as an
77 assessment against the unit. An association may not require the
78 payment of any other fees as a condition for the preparation or
79 delivery of an estoppel certificate.

80 (f) ~~(d)~~ The authority to charge a fee for the estoppel
81 certificate must ~~shall~~ be established by a written resolution
82 adopted by the board or provided by a written management,
83 bookkeeping, or maintenance contract and is payable upon the
84 preparation of the certificate. If the certificate is requested
85 in conjunction with the sale or mortgage of a unit but the
86 closing does not occur and no later than 30 days after the
87 closing date for which the certificate was sought the preparer
88 receives a written request, accompanied by reasonable
89 documentation, that the sale did not occur from a payor that is
90 not the unit owner, the fee shall be refunded to that payor
91 within 30 days after receipt of the request. The refund is the
92 obligation of the unit owner, and the association may collect it
93 from that owner in the same manner as an assessment as provided
94 in this section.

95 Section 2. Subsection (6) of section 719.108, Florida
96 Statutes, is amended to read:

97 719.108 Rents and assessments; liability; lien and
98 priority; interest; collection; cooperative ownership.-



712124

99 (6) An association shall issue an estoppel certificate to a
100 unit owner or the unit owner's designee or a unit mortgagee or
101 the unit mortgagee's designee within 10 business ~~15~~ days after
102 receiving a written request for the certificate. The estoppel
103 certificate must be delivered by mail, by hand delivery, or by
104 electronic means to the requester on the date of issuance.

105 (a) The estoppel certificate must contain all of the
106 following:

107 1. The date of issuance.

108 2. The amount of all assessments and other moneys owed to
109 the association by the unit owner for a specific unit on the
110 date of issuance. This amount is limited to the amounts
111 authorized to be recorded in the official records of the
112 association under s. 719.104(2).

113 3. The amount of any additional assessments and other
114 moneys that are scheduled to become due for each day after the
115 date of issuance for the 30-day or 35-day effective period of
116 the estoppel certificate. This amount is limited to the amounts
117 authorized to be recorded in the official records of the
118 association under s. 719.104(2). In calculating the amounts that
119 are scheduled to become due, the association may assume that any
120 delinquent amounts will remain delinquent during the effective
121 period of the estoppel certificate.

122 4. The amount of any fee charged by the association for
123 preparing and delivering the estoppel certificate. This fee is
124 in addition to any other amounts on the estoppel certificate.

125 5. The signature of an officer or agent of the association.

126 (b) An estoppel certificate that is delivered on the date
127 of issuance has a 30-day effective period. An estoppel



712124

128 certificate that is mailed to the requester has a 35-day
129 effective period.

130 (c) An association waives the right to collect any moneys
131 owed in excess of the amounts specified in the estoppel
132 certificate from any person who in good faith relies upon the
133 estoppel certificate and from that person's successors and
134 assigns.

135 (d) A summary proceeding pursuant to s. 51.011 may be
136 brought to compel compliance with this subsection, and in any
137 such action the prevailing party is entitled to recover
138 reasonable attorney fees. ~~by a unit owner or mortgagee, the~~
139 ~~association shall provide a certificate stating all assessments~~
140 ~~and other moneys owed to the association by the unit owner with~~
141 ~~respect to the cooperative parcel. Any person other than the~~
142 ~~unit owner who relies upon such certificate shall be protected~~
143 ~~thereby.~~

144 (e)1. Notwithstanding any limitation on transfer fees
145 contained in s. 719.106(1)(i), ~~an the~~ association or its
146 authorized agent may charge a ~~reasonable~~ fee, not to exceed its
147 reasonable costs to prepare and deliver ~~for the preparation of~~
148 the estoppel certificate. However, the fee for the estoppel
149 certificate may not exceed \$100 if on the date the certificate
150 is issued, there are no delinquent amounts owed to the
151 association for the applicable unit. If delinquent amounts are
152 owed to the association for the applicable unit, the fee for the
153 estoppel certificate may not exceed \$300. The association may
154 not charge a fee for an estoppel certificate that is issued more
155 than 10 business days after it receives a request for the
156 certificate.



712124

157 2. If the estoppel certificate is requested in conjunction
158 with the sale or refinancing of a unit, the fee for the
159 certificate shall be paid to the association from the closing or
160 settlement proceeds. If the closing does not occur within 60
161 days after the issuance of the estoppel certificate, the fee for
162 the certificate is the obligation of the unit owner, and the
163 association may collect the fee in the same manner as an
164 assessment against the unit. An association may not require the
165 payment of any other fees as a condition for the preparation or
166 delivery of an estoppel certificate.

167 (f) The authority to charge a fee for the estoppel
168 certificate must be established by a written resolution adopted
169 by the board or provided by a written management, bookkeeping,
170 or maintenance contract.

171 Section 3. Section 720.30851, Florida Statutes, is amended
172 to read:

173 720.30851 Estoppel certificates.—An association shall issue
174 an estoppel certificate to a parcel owner or the parcel owner's
175 designee or a mortgagee or the mortgagee's designee within 10
176 business ~~15~~ days after receiving a written request for the
177 certificate. The estoppel certificate must be delivered by mail,
178 by hand delivery, or by electronic means to the requester on the
179 date of issuance.

180 (1) The estoppel certificate must contain all of the
181 following:

182 (a) The date of issuance.

183 (b) The amount of all assessments and other moneys owed to
184 the association by the parcel owner for a specific parcel as
185 recorded on the date of issuance. This amount is limited to



712124

186 amounts authorized by statute to be recorded in the official
187 records of the association under s. 720.303(4).

188 (c) The amount of any additional assessments and other
189 moneys that are scheduled to become due for each day after the
190 date of issuance for the 30-day or 35-day effective period of
191 the estoppel certificate. This amount is limited to amounts
192 authorized by statute to be recorded in the official records of
193 the association under s. 720.303(4). In calculating the amounts
194 that are scheduled to become due, the association may assume
195 that any delinquent amounts will remain delinquent during the
196 effective period of the estoppel certificate.

197 (d) The amount of any fee charged by the association for
198 preparing and delivering the estoppel certificate. This fee is
199 in addition to any other amounts on the certificate.

200 (e) The signature of an officer or agent of the
201 association.

202 (2) An estoppel certificate that is delivered on the date
203 of issuance has a 30-day effective period. An estoppel
204 certificate that is mailed to the requester has a 35-day
205 effective period.

206 (3) An association waives the right to collect any moneys
207 owed in excess of the amounts specified in the estoppel
208 certificate from any person who in good faith relies upon the
209 estoppel certificate and from that person's successors and
210 assigns. ~~the date on which a request for an estoppel certificate~~
211 ~~is received from a parcel owner or mortgagee, or his or her~~
212 ~~designee, the association shall provide a certificate signed by~~
213 ~~an officer or authorized agent of the association stating all~~
214 ~~assessments and other moneys owed to the association by the~~



712124

215 ~~parcel owner or mortgagee with respect to the parcel. An~~
216 ~~association may charge a fee for the preparation of such~~
217 ~~certificate, and the amount of such fee must be stated on the~~
218 ~~certificate.~~

219 ~~(1) Any person other than a parcel owner who relies upon a~~
220 ~~certificate receives the benefits and protection thereof.~~

221 ~~(4)-(2)~~ A summary proceeding pursuant to s. 51.011 may be
222 brought to compel compliance with this section, and the
223 prevailing party is entitled to recover reasonable attorney
224 attorney's fees.

225 (5) (a) An association or its agent may charge a fee, not to
226 exceed its reasonable costs to prepare and deliver the estoppel
227 certificate. However, the fee for the estoppel certificate may
228 not exceed \$100 if on the date the certificate is issued, there
229 are no delinquent amounts owed to the association for the
230 applicable parcel. If delinquent amounts are owed to the
231 association for the applicable parcel, the fee for the
232 certificate may not exceed \$300. The association may not charge
233 a fee for an estoppel certificate that is issued more than 10
234 business days after it receives the request for the certificate.

235 (b) If the estoppel certificate is requested in conjunction
236 with the sale or refinancing of a parcel, the fee for the
237 certificate shall be paid to the association from the closing or
238 settlement proceeds. If the closing does not occur within 60
239 days after the issuance of the estoppel certificate, the fee for
240 the certificate is the obligation of the parcel owner, and the
241 association may collect the fee in the same manner as an
242 assessment against the parcel. An association may not require
243 the payment of any other fees as a condition for the preparation



712124

244 or delivery of an estoppel certificate.

245 ~~(6)(3) The authority to charge a fee for the estoppel~~
246 ~~certificate must shall be established by a written resolution~~
247 ~~adopted by the board or provided by a written management,~~
248 ~~bookkeeping, or maintenance contract and is payable upon the~~
249 ~~preparation of the certificate. If the certificate is requested~~
250 ~~in conjunction with the sale or mortgage of a parcel but the~~
251 ~~closing does not occur and no later than 30 days after the~~
252 ~~closing date for which the certificate was sought the preparer~~
253 ~~receives a written request, accompanied by reasonable~~
254 ~~documentation, that the sale did not occur from a payor that is~~
255 ~~not the parcel owner, the fee shall be refunded to that payor~~
256 ~~within 30 days after receipt of the request. The refund is the~~
257 ~~obligation of the parcel owner, and the association may collect~~
258 ~~it from that owner in the same manner as an assessment as~~
259 ~~provided in this section.~~

260 Section 4. This act shall take effect July 1, 2015.

261
262 ===== T I T L E A M E N D M E N T =====

263 And the title is amended as follows:

264 Delete everything before the enacting clause
265 and insert:

266 A bill to be entitled
267 An act relating to residential properties; amending
268 ss. 718.116, 719.108, and 720.30851, F.S.; revising
269 requirements relating to the issuance of an estoppel
270 certificate to specified persons; requiring that an
271 estoppel certificate contain certain information;
272 providing an effective period for a certificate based



712124

273 upon the date of issuance and form of delivery;
274 providing that the association waives a specified
275 claim against a person or such person's successors or
276 assigns who rely on the certificate in good faith;
277 authorizing a summary proceeding to be brought to
278 compel an association to prepare or deliver an
279 estoppel certificate; specifying the maximum amounts
280 an association may charge for an estoppel certificate;
281 providing that the authority to charge a fee for the
282 estoppel certificate must be established by a
283 specified written resolution or provided by a written
284 management, bookkeeping, or maintenance contract;
285 deleting obsolete provisions; conforming provisions to
286 changes made by the act; providing an effective date.

By the Committee on Regulated Industries; and Senators Stargel
and Detert

580-03231-15

2015736c1

1 A bill to be entitled
2 An act relating to residential properties; amending
3 ss. 718.116, 719.108, and 720.30851, F.S.; providing
4 requirements relating to the request for an estoppel
5 certificate by a unit or parcel owner or a unit or
6 parcel mortgagee; providing that the association
7 waives the right to collect any moneys owed in excess
8 of the amounts set forth in the estoppel certificate
9 under certain conditions; providing that the
10 association waives any claim against a person or
11 entity who would have relied in good faith upon the
12 estoppel certificate under certain conditions;
13 deleting provisions regarding expedited court action
14 to compel issuance of an estoppel certificate;
15 providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Subsection (8) of section 718.116, Florida
20 Statutes, is amended to read:

21 718.116 Assessments; liability; lien and priority;
22 interest; collection.-

23 (8) Within 10 ~~15~~ days after receiving a written request for
24 an estoppel certificate therefor from a unit owner or his or her
25 designee, or a unit mortgagee or his or her designee, the
26 association shall deliver by mail, hand, or electronic means an
27 estoppel provide a certificate signed by an officer or agent of
28 the association. The estoppel certificate must be dated as of
29 the date it is delivered, must be valid for at least 30 days,

Page 1 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-03231-15

2015736c1

30 and must state ~~stating~~ all assessments and other moneys owed to
31 the association by the unit owner with respect to the unit, as
32 reflected in records maintained pursuant to s. 718.111(12),
33 through a date that is at least 30 days after the date of the
34 estoppel certificate ~~condominium parcel~~.

35 (a) An association waives the right to collect any moneys
36 owed in excess of the amounts set forth in the estoppel
37 certificate from any person who in good faith relies upon the
38 estoppel certificate and from that person's successors and
39 assigns ~~Any person other than the owner who relies upon such~~
40 ~~certificate shall be protected thereby.~~

41 (b) If an association receives a written request for an
42 estoppel certificate from a unit owner or his or her designee,
43 or a unit mortgagee or his or her designee, and fails to deliver
44 an estoppel certificate as required by this section, the
45 association waives, as to any person who would have in good
46 faith relied on the estoppel certificate and as to that person's
47 successors and assigns, any claim, including a claim for a lien
48 against the unit, for any amounts owed to the association that
49 should have been shown on the estoppel certificate ~~A summary~~
50 ~~proceeding pursuant to s. 51.011 may be brought to compel~~
51 ~~compliance with this subsection, and in any such action the~~
52 ~~prevailing party is entitled to recover reasonable attorney's~~
53 ~~fees.~~

54 (c) Notwithstanding any limitation on transfer fees
55 contained in s. 718.112(2) (i), an the association or its
56 authorized agent may charge a reasonable estoppel certificate a
57 reasonable fee as determined by the cost of providing such
58 information for the preparation and delivery of the estoppel

Page 2 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-03231-15

2015736c1

59 certificate. The amount of the estoppel certificate fee must be
 60 included on the estoppel certificate. If the estoppel
 61 certificate is requested in conjunction with the sale or
 62 refinancing of a unit, the estoppel certificate fee shall be due
 63 and payable no earlier than the closing of the sale or
 64 refinancing, and shall be paid from closing settlement proceeds.
 65 If the closing does not occur within 60 days after the date the
 66 estoppel certificate is delivered, the estoppel certificate fee
 67 is the obligation of the unit owner and the association may
 68 collect the estoppel certificate fee only in the same manner as
 69 an assessment against the unit owner as set forth in this
 70 section. The preparation and delivery of an estoppel certificate
 71 may not be conditioned upon the payment of any other fees.

72 (d) The authority to charge a fee for the estoppel
 73 certificate shall be established by a written resolution adopted
 74 by the board or provided by a written management, bookkeeping,
 75 or maintenance contract ~~and is payable upon the preparation of~~
 76 ~~the certificate. If the certificate is requested in conjunction~~
 77 ~~with the sale or mortgage of a unit but the closing does not~~
 78 ~~occur and no later than 30 days after the closing date for which~~
 79 ~~the certificate was sought the preparer receives a written~~
 80 ~~request, accompanied by reasonable documentation, that the sale~~
 81 ~~did not occur from a payor that is not the unit owner, the fee~~
 82 ~~shall be refunded to that payor within 30 days after receipt of~~
 83 ~~the request. The refund is the obligation of the unit owner, and~~
 84 ~~the association may collect it from that owner in the same~~
 85 ~~manner as an assessment as provided in this section.~~

86 Section 2. Subsection (6) of section 719.108, Florida
 87 Statutes, is amended to read:

Page 3 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-03231-15

2015736c1

88 719.108 Rents and assessments; liability; lien and
 89 priority; interest; collection; cooperative ownership.-
 90 (6) Within 10 ~~15~~ days after receiving a written request for
 91 an estoppel certificate from ~~by~~ a unit owner or his or her
 92 designee, or a unit mortgagee or his or her designee, the
 93 association shall deliver by mail, hand, or electronic means an
 94 estoppel ~~provide~~ a certificate signed by an officer or agent of
 95 the association. The estoppel certificate must be dated as of
 96 the date it is delivered, must be valid for at least 30 days,
 97 and must state ~~stating~~ all assessments and other moneys owed to
 98 the association by the unit owner with respect to the
 99 cooperative parcel, as reflected in records maintained pursuant
 100 to s. 719.104(2), through a date that is at least 30 days after
 101 the date of the estoppel certificate.

102 (a) An association waives the right to collect any moneys
 103 owed in excess of the amounts set forth in the estoppel
 104 certificate from any person who in good faith relies upon the
 105 estoppel certificate, and from that person's successors and
 106 assigns ~~Any person other than the unit owner who relies upon~~
 107 ~~such certificate shall be protected thereby.~~

108 (b) If an association receives a written request for an
 109 estoppel certificate from a unit owner or his or her designee,
 110 or a unit mortgagee or his or her designee, and fails to deliver
 111 an estoppel certificate as required by this section, the
 112 association waives, as to any person who would have in good
 113 faith relied on the estoppel certificate and as to that person's
 114 successors and assigns, any claim, including a claim for a lien
 115 against the unit, for any amounts owed to the association that
 116 should have been shown on the estoppel certificate.

Page 4 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-03231-15

2015736c1

117 (c) Notwithstanding any limitation on transfer fees
 118 contained in s. 719.106(1)(i), an the association or its
 119 authorized agent may charge a reasonable estoppel certificate a
 120 reasonable fee as determined by the cost of providing such
 121 information for the preparation and delivery of the estoppel
 122 certificate. The amount of the estoppel certificate fee must be
 123 included on the estoppel certificate. If the estoppel
 124 certificate is requested in conjunction with the sale or
 125 refinancing of a unit, the estoppel certificate fee shall be due
 126 and payable no earlier than the closing of the sale or
 127 refinancing, and shall be paid from closing settlement proceeds.
 128 If the closing does not occur within 60 days after the date the
 129 estoppel certificate is delivered, the estoppel certificate fee
 130 is the obligation of the unit owner and the association may
 131 collect the estoppel certificate fee only in the same manner as
 132 an assessment against the unit owner as set forth in this
 133 section. The preparation and delivery of an estoppel certificate
 134 may not be conditioned upon the payment of any other fees.

135 (d) The authority to charge a fee for the estoppel
 136 certificate shall be established by a written resolution adopted
 137 by the board or provided by a written management, bookkeeping,
 138 or maintenance contract.

139 Section 3. Section 720.30851, Florida Statutes, is amended
 140 to read:

141 720.30851 Estoppel certificates.—Within 10 ~~45~~ days after
 142 receiving the date on which a written request for an estoppel
 143 certificate is received from a parcel owner or his or her
 144 designee, or a parcel mortgagee, or his or her designee, the
 145 association shall deliver by mail, hand, or electronic means an

580-03231-15

2015736c1

146 ~~estoppel provide~~ a certificate signed by an officer or
 147 ~~authorized~~ agent of the association. The estoppel certificate
 148 must be dated as of the date it is delivered, must be valid for
 149 at least 30 days, and must state stating all assessments and
 150 other moneys owed to the association by the parcel owner or
 151 parcel mortgagee with respect to the parcel, as reflected in
 152 records maintained pursuant to s. 720.303(4), through a date
 153 that is at least 30 days after the date of the estoppel
 154 certificate. An association may charge a fee for the preparation
 155 of such certificate, and the amount of such fee must be stated
 156 on the certificate.

157 (1) An association waives the right to collect any moneys
 158 owed in excess of the amounts set forth in the estoppel
 159 certificate from any person who in good faith relies upon the
 160 estoppel certificate, and from that person's successors and
 161 assigns Any person other than a parcel owner who relies upon a
 162 certificate receives the benefits and protection thereof.

163 (2) If an association receives a written request for an
 164 estoppel certificate from a parcel owner or his or her designee,
 165 or a parcel mortgagee or his or her designee, and fails to
 166 deliver an estoppel certificate as required by this section, the
 167 association waives, as to any person who would have in good
 168 faith relied on the estoppel certificate and as to that person's
 169 successors and assigns, any claim, including a claim for a lien
 170 against the parcel, for any amounts owed to the association that
 171 should have been shown on the estoppel certificate A summary
 172 proceeding pursuant to s. 51.011 may be brought to compel
 173 compliance with this section, and the prevailing party is
 174 entitled to recover reasonable attorney's fees.

580-03231-15

2015736c1

175 (3) An association or its agent may charge a reasonable
 176 estoppel certificate fee as determined by the cost of providing
 177 such information for the preparation and delivery of the
 178 estoppel certificate. The amount of the estoppel certificate fee
 179 must be included on the estoppel certificate. If the estoppel
 180 certificate is requested in conjunction with the sale or
 181 refinancing of a parcel, the estoppel certificate fee shall be
 182 due and payable no earlier than the closing of the sale or
 183 refinancing, and shall be paid from the closing settlement
 184 proceeds. If the closing does not occur within 60 days after the
 185 date the estoppel certificate is delivered, the estoppel
 186 certificate fee is the obligation of the parcel owner and the
 187 association may collect the estoppel certificate fee only in the
 188 same manner as an assessment against the parcel owner as set
 189 forth in s. 720.3085. The preparation and delivery of an
 190 estoppel certificate may not be conditioned upon the payment of
 191 any other fees.

192 (4) The authority to charge a fee for the estoppel
 193 certificate shall be established by a written resolution adopted
 194 by the board or provided by a written management, bookkeeping,
 195 or maintenance contract and is payable upon the preparation of
 196 the certificate. If the certificate is requested in conjunction
 197 with the sale or mortgage of a parcel but the closing does not
 198 occur and no later than 30 days after the closing date for which
 199 the certificate was sought the preparer receives a written
 200 request, accompanied by reasonable documentation, that the sale
 201 did not occur from a payor that is not the parcel owner, the fee
 202 shall be refunded to that payor within 30 days after receipt of
 203 the request. The refund is the obligation of the parcel owner,

Page 7 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-03231-15

2015736c1

204 ~~and the association may collect it from that owner in the same~~
 205 ~~manner as an assessment as provided in this section.~~

206 Section 4. This act shall take effect July 1, 2015.

Page 8 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic Security
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

April 1, 2015

The Honorable Miguel Diaz de la Portilla
Senate Judiciary Committee, Chair
406 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Diaz de la Portilla:

I am respectfully requesting that SB 736, related to *Residential Properties*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: Tom Cibula/ Staff Director
Shirley Proctor/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 796

INTRODUCER: Senator Evers

SUBJECT: Financial Reporting

DATE: April 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>Caldwell</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 796 deletes the provision that permits condominium, cooperative, and homeowners' associations operating fewer than 50 units or parcels, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures in lieu of financial statements based on the amount of annual revenue.

II. Present Situation:

Condominium

A condominium is a "form of ownership of real property created pursuant to [ch. 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."¹ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.² A declaration is like a constitution in that it:

Strictly 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.³

A declaration "may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property."⁴ A declaration of condominium may be amended as provided in the declaration.⁵ If the declaration does not

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

⁴ Section 718.104(5), F.S.

⁵ See s. 718.110(1)(a), F.S.

provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.⁶ Condominiums are administered by a board of directors referred to as a “board of administration.”⁷

Cooperative Associations

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

that 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.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit’s occupants receive an exclusive right to occupy the unit. 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.⁸

Homeowners’ Associations

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners’ associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.⁹

A “homeowners’ association” is defined as a “Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and 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.”¹⁰ Unless specifically stated to the contrary, homeowners’ associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.¹¹

Homeowners’ associations are administered by a board of directors whose members are elected.¹² The powers and duties of homeowners’ associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.¹³

⁶ Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

⁷ Section 718.103(4), F.S.

⁸ *See* ss. 719.106(1)(g) and 719.107, F.S.

⁹ *See* s. 720.302(1), F.S.

¹⁰ Section 720.301(9), F.S.

¹¹ Section 720.302(5), F.S.

¹² *See* ss. 720.303 and 720.307, F.S.

¹³ *See* ss. 720.301 and 720.303, F.S.

Financial Reporting for Community Associations

Sections 718.111(13), 719.104(4), and 720.303(7), F.S., set forth the financial reporting responsibilities of condominium, cooperative, and homeowners' associations. Associations have 90 days after the end of the fiscal year to prepare and complete a financial report for the preceding fiscal year. The type of financial statements or information that must be provided is based on the association's total annual revenues.

If the association has a total annual revenue of \$150,000 or more, but less than \$300,000, the association must prepare compiled financial statements.¹⁴ If the association has a total annual revenue of at least \$300,000 and not less than \$500,000, the association must prepare reviewed financial statements.¹⁵ If the total annual revenue is \$500,000 or more, the association must prepare audited financial statements.¹⁶ If the total annual revenue is less than \$150,000, then a report of cash receipts must be prepared.¹⁷

An association having fewer than 50 units ("parcels" for homeowners' associations), regardless of annual revenue, may prepare a report of cash receipt and expenditures instead of financial statements, unless the governing documents provide otherwise.¹⁸

In a condominium association, the board may use a higher level of reporting without a meeting or approval of the membership. It may not use a lower level of reporting without a majority of the voting interests present at a properly called meeting of the association.¹⁹

In cooperative and homeowners' association, upon a petition by 20 percent of the voting interests in the association, the level of reporting may be increased or decreased after a majority vote of the voting interests.²⁰

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums and cooperatives are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) in accordance with ch. 718, F.S., and ch. 719, F.S. The division is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., and ch. 719, F.S., with respect to associations that are still under developer

¹⁴ A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant's (CPA) assurance as to conformity with Generally Accepted Accounting Principles (GAAP). Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron's Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron's 2000).

¹⁵ A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

¹⁶ An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

¹⁷ Sections 718.111(13)(a), 719. 104(4)(b), and 720.303(7)(a), F.S.

¹⁸ Sections 718.111(13)(b)2., 719. 104(4)(c)2., and 720.303(7)(b)2., F.S.

¹⁹ Sections 718.111(13)(c) and (d), F.S.

²⁰ Sections 719.104(4)(d) and (e), and 720.303(7)(c) and (d), F.S.

control.²¹ The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover control to the association, pursuant to s. 718.301, F.S., and s. 719.301, F.S., respectively.²² After control of the condominium or cooperative is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.²³

As part of the division's authority to investigate complaints, s. 718.501(1), F.S., and s. 719.501(1), F.S., authorize the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

The division's jurisdiction regarding homeowners' associations is limited to conducting binding arbitration upon a petition resolve election recall disputes.²⁴

III. Effect of Proposed Changes:

The bill repeals the provisions in ss. 718.111(13)(b)2., 719.104(4)(c)2., and 720.303(7)(b)2., F.S., which provide that an association operating fewer than 50 units ("parcels" for homeowners' associations), regardless of the association's annual revenues, must prepare a report of cash receipts and expenditures in lieu of the financial statements based on the amount of annual revenue.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²¹ Section 718.501(1), F.S., s. 719.501(1), F.S.

²² *Id.*

²³ *Id.*

²⁴ *See* ss. 720.303(10)(d) and 720.311(1), F.S.

B. Private Sector Impact:

Condominium, cooperative, and homeowners' associations of 50 units or parcels may incur additional expense if required to prepare financial statements based on the amount of annual revenue instead of a report of cash receipts.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 718.111, 719.104, and 720.303.

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.

By Senator Evers

2-00735-15

2015796__

1 A bill to be entitled
 2 An act relating to financial reporting; amending ss.
 3 718.111, 719.104, and 720.303, F.S.; deleting
 4 provisions with respect to the preparation by certain
 5 condominium associations, cooperative associations,
 6 and homeowners' associations of annual reports of cash
 7 receipts and expenditures in lieu of certain financial
 8 statements; providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Paragraph (b) of subsection (13) of section
 13 718.111, Florida Statutes, is amended to read:
 14 718.111 The association.—
 15 (13) FINANCIAL REPORTING.—Within 90 days after the end of
 16 the fiscal year, or annually on a date provided in the bylaws,
 17 the association shall prepare and complete, or contract for the
 18 preparation and completion of, a financial report for the
 19 preceding fiscal year. Within 21 days after the final financial
 20 report is completed by the association or received from the
 21 third party, but not later than 120 days after the end of the
 22 fiscal year or other date as provided in the bylaws, the
 23 association shall mail to each unit owner at the address last
 24 furnished to the association by the unit owner, or hand deliver
 25 to each unit owner, a copy of the financial report or a notice
 26 that a copy of the financial report will be mailed or hand
 27 delivered to the unit owner, without charge, upon receipt of a
 28 written request from the unit owner. The division shall adopt
 29 rules setting forth uniform accounting principles and standards

Page 1 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

2-00735-15

2015796__

30 to be used by all associations and addressing the financial
 31 reporting requirements for multicondominium associations. The
 32 rules must include, but not be limited to, standards for
 33 presenting a summary of association reserves, including a good
 34 faith estimate disclosing the annual amount of reserve funds
 35 that would be necessary for the association to fully fund
 36 reserves for each reserve item based on the straight-line
 37 accounting method. This disclosure is not applicable to reserves
 38 funded via the pooling method. In adopting such rules, the
 39 division shall consider the number of members and annual
 40 revenues of an association. Financial reports shall be prepared
 41 as follows:
 42 (b)1. An association with total annual revenues of less
 43 than \$150,000 shall prepare a report of cash receipts and
 44 expenditures.
 45 ~~2. An association that operates fewer than 50 units,~~
 46 ~~regardless of the association's annual revenues, shall prepare a~~
 47 ~~report of cash receipts and expenditures in lieu of financial~~
 48 ~~statements required by paragraph (a).~~
 49 2.3. A report of cash receipts and disbursements must
 50 disclose the amount of receipts by accounts and receipt
 51 classifications and the amount of expenses by accounts and
 52 expense classifications, including, but not limited to, the
 53 following, as applicable: costs for security, professional and
 54 management fees and expenses, taxes, costs for recreation
 55 facilities, expenses for refuse collection and utility services,
 56 expenses for lawn care, costs for building maintenance and
 57 repair, insurance costs, administration and salary expenses, and
 58 reserves accumulated and expended for capital expenditures,

Page 2 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

2-00735-15

2015796__

59 deferred maintenance, and any other category for which the
60 association maintains reserves.

61 Section 2. Paragraph (c) of subsection (4) of section
62 719.104, Florida Statutes, is amended to read:

63 719.104 Cooperatives; access to units; records; financial
64 reports; assessments; purchase of leases.-

65 (4) FINANCIAL REPORT.-

66 (c)1. An association with total annual revenues of less
67 than \$150,000 shall prepare a report of cash receipts and
68 expenditures.

69 ~~2. An association in a community of fewer than 50 units,
70 regardless of the association's annual revenues, shall prepare a
71 report of cash receipts and expenditures in lieu of the
72 financial statements required by paragraph (b), unless the
73 declaration or other recorded governing documents provide
74 otherwise.~~

75 2.3- A report of cash receipts and expenditures must
76 disclose the amount of receipts by accounts and receipt
77 classifications and the amount of expenses by accounts and
78 expense classifications, including the following, as applicable:
79 costs for security, professional, and management fees and
80 expenses; taxes; costs for recreation facilities; expenses for
81 refuse collection and utility services; expenses for lawn care;
82 costs for building maintenance and repair; insurance costs;
83 administration and salary expenses; and reserves, if maintained
84 by the association.

85 Section 3. Paragraph (b) of subsection (7) of section
86 720.303, Florida Statutes, is amended to read:

87 720.303 Association powers and duties; meetings of board;

2-00735-15

2015796__

88 official records; budgets; financial reporting; association
89 funds; recalls.-

90 (7) FINANCIAL REPORTING.-Within 90 days after the end of
91 the fiscal year, or annually on the date provided in the bylaws,
92 the association shall prepare and complete, or contract with a
93 third party for the preparation and completion of, a financial
94 report for the preceding fiscal year. Within 21 days after the
95 final financial report is completed by the association or
96 received from the third party, but not later than 120 days after
97 the end of the fiscal year or other date as provided in the
98 bylaws, the association shall, within the time limits set forth
99 in subsection (5), provide each member with a copy of the annual
100 financial report or a written notice that a copy of the
101 financial report is available upon request at no charge to the
102 member. Financial reports shall be prepared as follows:

103 (b)1. An association with total annual revenues of less
104 than \$150,000 shall prepare a report of cash receipts and
105 expenditures.

106 ~~2. An association in a community of fewer than 50 parcels,
107 regardless of the association's annual revenues, may prepare a
108 report of cash receipts and expenditures in lieu of financial
109 statements required by paragraph (a) unless the governing
110 documents provide otherwise.~~

111 2.3- A report of cash receipts and disbursement must
112 disclose the amount of receipts by accounts and receipt
113 classifications and the amount of expenses by accounts and
114 expense classifications, including, but not limited to, the
115 following, as applicable: costs for security, professional, and
116 management fees and expenses; taxes; costs for recreation

2-00735-15

2015796__

117 facilities; expenses for refuse collection and utility services;
118 expenses for lawn care; costs for building maintenance and
119 repair; insurance costs; administration and salary expenses; and
120 reserves if maintained by the association.

121 Section 4. This act shall take effect July 1, 2015.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1528

INTRODUCER: Senator Evers

SUBJECT: Commission on Federalism

DATE: April 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 1528 creates a seven-member Commission on Federalism. The commission begins meeting in January 2016 and is authorized to evaluate any federal action to determine if it violates the principle of federalism. If the commission determines that a violation has occurred, specific follow-up actions are authorized to gather additional information or communicate the commission's concerns. The commission is authorized to recommend to the Governor that he or she call a special session of the Legislature to respond to the evaluated law.

The commission is required to maintain on the Legislature's website each federal law evaluated, any action taken, and any response received by a federal government entity. The commission is required to electronically submit a report to the Governor and Legislature twice each year.

II. Present Situation:

In colonial America, the individual states existed separately and before the federal government was formed. Through the United States Constitution the states delegated power to the federal government while reserving power to themselves at the same time. The defining line between state and federal power is the Tenth Amendment to the United States Constitution, which provides:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.¹

This division of authority between the federal and state governments is known as federalism. Certain limited powers are entrusted solely to the Federal Government while other powers are reserved to the states, and yet other powers may be exercised concurrently by the state and

¹ U.S. Const. amend. X.

federal governments.² The concept of dual sovereignty, or two governments existing within the same territorial boundaries, has been the subject of much discussion, disagreement, and litigation.

James Madison noted, in discussing the dual establishment of a federal government and state governments, that a “double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.”³

Federalism, however, has often led to differing opinions as to whether one government is encroaching upon the powers held by the other government. The U.S. Supreme Court has stated:

One fairly can dispute whether our federalist system has been quite as successful in checking government abuse as Hamilton promised, but there is no doubt about the design. If this “double security” is to be effective, there must be a proper balance between the States and the Federal Government. These twin powers will act as mutual restraints only if both are credible. In the tension between federal and state power lies the promise of liberty.⁴

The state does not currently have a formal mechanism for measuring whether federal laws encroach upon the state’s sovereign authority.

III. Effect of Proposed Changes:

This bill creates the Commission on Federalism to evaluate whether a federal law is properly authorized under the United States Constitution or whether it violates the principle of federalism.

Meeting Requirements

The commission is required to hold its initial meeting in January 2016 and meet six times annually unless additional meetings are approved by the President of the Senate and the Speaker of the House of Representatives. Staff will be assigned by those leaders to assist the commission.

Membership

The seven members of the commission are:

- The President of the Senate or his or her designee, who will be the co-chair of the commission;
- A Senate member appointed by the President of the Senate;
- The Speaker of the House of Representatives or his or her designee, who will also serve as co-chair;
- Two members of the House of Representatives who will be appointed by the Speaker;
- The Minority Leader of the Senate or his or her designee; and

² 16A AM. JUR. 2D CONSTITUTIONAL LAW s. 214 (2015).

³ *The Federalist No. 51*, p. 57 B. F. Wright ed. 1961. In this paper, Madison wrote to the people of New York defending the checks and balances system in the Constitution.

⁴ *Gregory v. Ashcroft*, 501 U.S. 452, 459 (1991).

- The Minority Leader of the House of Representatives or his or her designee.

If a vacancy occurs, it shall be filled in the same manner as the original appointment. Members are entitled to receive reimbursement for per diem and travel expenses as provided by statute.

Duties

If a majority of the commission agrees, it may evaluate a federal law. To facilitate its evaluation, the commission is authorized to request pertinent information from a member of the Florida Congressional Delegation. If a majority of the commission determines that a federal law, agency, policy, mandate, or executive order is not authorized under the doctrine of federalism, a co-chair may:

- Request information about the law or assistance from the Florida Congressional Delegation in communicating with a federal government entity about the federal law;
- Give written notice of an evaluation of the law to the federal entity responsible for adopting or administering the law and request that the government entity respond to the commission's evaluation by a specific date;
- Request a meeting, either in person or by electronic means, with the federal government entity responsible or a member of Congress to discuss the evaluated law and a possible remedy;
- Correspond with another state's presiding legislative officers or with a government entity of another state which has similar powers and duties of the commission and coordinate the evaluation of and a response to the federal law.

If a majority of the commission agrees, it may recommend to the Governor that he or she call a special session to respond to the evaluated law.

The commission is required to maintain on the Legislature's website the following information:

- Each federal law evaluated by the commission;
- Any action taken by a co-chair upon the finding that a federal law, agency, policy, mandate, or executive order is not an authorized federal action; and
- Any response to an evaluation received from a federal government entity, official, or employee.

Evaluation

When evaluating a federal law, the commission must determine whether the law:

- Is authorized by any of the express enumerated powers contained in the United States Constitution and amendments; or
- Violates the principle of federalism, based upon specified criteria.

Sources

When evaluating a federal law, the commission must rely on:

- The text of the United States Constitution and ratified amendments;
- The meaning of the text of the United States Constitution and amendments ratified at the time of drafting and ratification; and

- A primary source document directly relevant to the drafting, ratification, or initial implementation of the United States Constitution and duly ratified amendments or a primary source document created by a person who was directly involved in the drafting, adoption, ratification, or initial implementation of the Constitution and duly ratified amendments.

The commission may rely on other relevant sources such as federal court decisions, but is not bound by a federal court opinion.

Reporting Requirement

The commission must electronically submit a report to the Governor and the Legislature on or by May 20 and October 20 of each year. The report must summarize any lawful action taken by the commission and any action taken by or communication received from the following persons or entities in response to an action by the commission:

- A member of the Florida Congressional Delegation;
- A congressional member from another state; or
- A federal government entity, official, or employee.

Effective Date

The bill takes effect on July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to have an impact on cities or counties and as such, does not appear to be a mandate for constitutional purposes.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. **Government Sector Impact:**

None.

VI. Technical Deficiencies:

There appears to be a drafting inconsistency in the scope of material that the commission may review. In section (3), Duties, the commission is authorized in paragraph (3)(a) to evaluate “a federal law” when agreed to by a majority of the commission. In paragraph (3)(c), however, a reference is made to the commission finding that “a federal law, agency, policy, mandate, or executive order” is not authorized. The scope of paragraph (3)(a) seems to be more restrictive in what the commission may evaluate than what is listed in paragraph (3)(c).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 11.9006, Florida Statutes.

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.

By Senator Evers

2-00203-15

20151528__

1 A bill to be entitled
 2 An act relating to the Commission on Federalism;
 3 creating s. 11.9006, F.S.; creating the Commission on
 4 Federalism; providing for the membership, meetings,
 5 and staff support of the commission; authorizing
 6 members to be reimbursed for per diem and travel
 7 expenses; providing duties of the commission;
 8 providing criteria to evaluate a federal law;
 9 specifying what sources the commission may rely on in
 10 an evaluation of a federal law; requiring the
 11 commission to submit biannual reports to the Governor
 12 and the Legislature; providing report requirements;
 13 providing an effective date.

15 Be It Enacted by the Legislature of the State of Florida:

16 Section 1. Section 11.9006, Florida Statutes, is created to
 17 read:

18 11.9006 Commission on Federalism.-

19 (1) CREATION.-The Commission on Federalism is created. The
 20 commission shall hold its first meeting in January 2016, and
 21 shall meet six times each calendar year unless additional
 22 meetings are approved by the President of the Senate and the
 23 Speaker of the House of Representatives. The President of the
 24 Senate and the Speaker of the House of Representatives shall
 25 assign staff to assist the commission.

26 (2) MEMBERSHIP.-

27 (a) The commission is composed of seven members, as
 28 follows:

Page 1 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

2-00203-15

20151528__

30 1. The President of the Senate or his or her designee, who
 31 shall serve as co-chair;
 32 2. A member of the Senate appointed by the President of the
 33 Senate;
 34 3. The Speaker of the House of Representatives or his or
 35 her designee, who shall serve as co-chair;
 36 4. Two members of the House of Representatives appointed by
 37 the Speaker of the House of Representatives;
 38 5. The Minority Leader of the Senate or his or her
 39 designee; and
 40 6. The Minority Leader of the House of Representatives or
 41 his or her designee.
 42 (b) A vacancy on the commission shall be filled in the same
 43 manner as the original appointment.
 44 (c) Members of the commission are entitled to receive
 45 reimbursement for per diem and travel expenses pursuant to s.
 46 112.061.
 47 (3) DUTIES.-
 48 (a) The commission may evaluate a federal law when such
 49 action is agreed to by a majority of the commission.
 50 (b) The commission may request information regarding a
 51 federal law from a member of Florida's Congressional Delegation
 52 to facilitate this evaluation.
 53 (c) If a majority of the commission finds that a federal
 54 law, agency, policy, mandate, or executive order is not
 55 authorized by the powers delegated to the Federal Government or
 56 any of its agencies under the United States Constitution or
 57 violates the principle of federalism as described in subsection
 58 (4), a co-chair of the commission may:

Page 2 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

2-00203-15

20151528__

59 1. Request information about the federal law or assistance
 60 from a member of Florida's Congressional Delegation in
 61 communicating with a federal government entity regarding the
 62 federal law;

63 2. Give written notice of an evaluation of the federal law
 64 to the federal government entity responsible for adopting or
 65 administering the evaluated law and request that the federal
 66 government entity respond to the commission's evaluation by a
 67 specific date;

68 3. Request a meeting, conducted in person or by electronic
 69 means, with the responsible federal government entity or any
 70 member of Congress to discuss the evaluated law and any possible
 71 remedy; or

72 4. Correspond with the presiding officers of the
 73 legislative branch of another state or with a government entity
 74 of another state which has powers and duties that are similar to
 75 those of the commission to discuss and coordinate the evaluation
 76 of and response to the federal law.

77 (d) If agreed upon by a majority vote, the commission may
 78 recommend to the Governor that he or she call a special session
 79 of the Legislature to respond to the evaluated law.

80 (e) The commission shall maintain the following information
 81 on the website of the Florida Legislature:

82 1. Each federal law evaluated by the commission;

83 2. Any action taken by a co-chair of the commission under
 84 paragraph (c); and

85 3. Any response to an evaluation received from a federal
 86 government entity, official, or employee.

87 (4) EVALUATION.—The commission shall determine whether a

2-00203-15

20151528__

88 federal law evaluated by the commission:

89 (a) Is authorized by any of the express enumerated powers
 90 contained in the United States Constitution and duly ratified
 91 amendments.

92 (b) Violates the principle of federalism by:

93 1. Affecting the distribution of power and responsibility
 94 between the state and federal governments;

95 2. Limiting the policymaking discretion of the state;

96 3. Affecting a power or a right reserved to the state or
 97 its residents by the Ninth Amendment or the Tenth Amendment to
 98 the United States Constitution; and

99 4. Affecting the sovereignty rights and interests of the
 100 state or a political subdivision to provide for the health,
 101 safety, and welfare and to promote the prosperity of the
 102 residents in the state or the political subdivision.

103 (5) (a) SOURCES.—In evaluating a federal law, the commission
 104 shall rely on:

105 1. The text of the United States Constitution and duly
 106 ratified amendments.

107 2. The meaning of the text of the United States
 108 Constitution and duly ratified amendments at the time of
 109 drafting and ratification.

110 3. A primary source document that is directly relevant to
 111 the drafting, ratification, or initial implementation of the
 112 United States Constitution and duly ratified amendments or
 113 created by a person directly involved in the drafting, adoption,
 114 ratification, or initial implementation of the United States
 115 Constitution and duly ratified amendments.

116 (b) The commission may rely on other relevant sources,

2-00203-15

20151528__

117 including federal court decisions. However, the commission's
118 evaluation of a federal law is not bound by a holding by a
119 federal court.

120 (6) REPORT REQUIREMENT.—On or by May 20 and October 20 of
121 each year, the commission shall electronically submit a report
122 to the Governor and the Legislature which summarizes the
123 following:

124 (a) Action taken by the commission in accordance with this
125 section.

126 (b) Action taken by, or communication received from, the
127 following in response to a request, inquiry, or any other action
128 taken by the commission:

129 1. A member of Florida's Congressional Delegation;

130 2. A member of Congress from another state; or

131 3. A federal government entity, official, or employee.

132 Section 2. This act shall take effect July 1, 2015.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 912

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Bean

SUBJECT: Recycled and Recovered Materials

DATE: April 6, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gudeman</u>	<u>Uchino</u>	<u>EP</u>	Fav/CS
2.	<u>Procaccini</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 912 provides relief from liability for a person that sells, transfers, or arranges for the transfer of recycled and recovered materials to a facility owned or operated by another person for the purpose of reclamation, recycling, manufacturing, or reuse of the materials. The bill defines “recycled and recovered materials” and provides the applicable dates for a cause of action.

II. Present Situation:

Section 403.727, F.S., provides the violations, defenses, penalties, and remedies for violations under Part IV of ch. 403, F.S. The law provides specific penalties for hazardous waste generators, transporters, or facility owners or operators that do not comply with the law, operate without a permit, do not comply with a valid permit, cause a hazard to occur or continue to occur, or do not properly disclose the characteristics of the hazardous waste. The law specifies that the owner or operator of a facility, a person who owned or operated a facility at the time a hazardous substance was disposed of, the person who arranged for the transport or disposal of the hazardous substance, and any person that accepts any hazardous substance for transport or disposal is liable for the costs associated with the damage and remediation of the hazardous substance as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.¹

¹ Pub. L. No. 96-510, s. 94 stat. 2767 (1980).

Section 403.727, F.S., provides defenses of liability for a person who may be in violation of the law including an act of war, an act of government, an act of God, and an act or omission by a third party. In addition, a generator or transporter of hazardous waste that complies the law and contracts for the disposal of hazardous wastes with a licensed facility is relieved from liability for the hazardous wastes upon receipt of the certificate of disposal. A generator of hazardous waste that contracts for the transport of hazardous waste is relieved of liability to the extent that the liability is covered by the insurance or bond of the transporter.

The Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was enacted by Congress on December 11, 1980. The law provides broad federal authority to respond to releases or threatened release of hazardous substances that may endanger public health or the environment. CERCLA establishes prohibitions and requirements for closed and abandoned hazardous waste sites, makes responsible persons liable for the release of hazardous waste, and establishes a trust fund to provide for cleanup if a responsible party cannot be identified.²

The Superfund Recycling Equity Act of 1999 generally exempts generators and transporters of recyclable materials from liability under CERCLA.³ The law reduces waste and promotes natural resource conservation by promoting the reuse and recycling of scrap material.⁴ However, the transporter may be liable under CERCLA if the transporter fails to use reasonable care with the management and handling of recycled and recovered material.⁵ Whether a transporter uses reasonable care is based upon the following criteria:

- The price paid in the recycling transaction;
- The ability of an individual to detect the nature of the consuming facility's operations; and
- The history and current compliance of the facility with state, federal, or local environmental laws and statues in the handling, processing, reclamation, or other management activity associated with recyclable materials.⁶

III. Effect of Proposed Changes:

The bill amends s. 403.727, F.S., to provide relief from liability to any person that sells, transfers, or arranges for the transfer of recycled and recovered materials to a facility owned or operated by another person for the purpose of reclamation, recycling, manufacturing, or reuse, and the hazardous substance is released or threatened to be released from the receiving facility.

The relief from liability does not apply if the person fails to exercise reasonable care in managing and handling the recycled and recovered material. It also does not apply if the arrangement for the reclamation, recycling, manufacturing, or reuse of the material was not expected to be legitimate based on the information available to the person at the time of the arrangement.

² *Id.*

³ Pub. L. 106-113, s. 127 stat. 9627 (1999).

⁴ Dept. of Energy, *Office of Health Safety and Security, CERCLA*, <http://homer.ornl.gov/sesa/environment/policy/cercla.html> (last visited April. 3, 2015).

⁵ 42 U.S.C. s. 9627(c)

⁶ *Id.*

The bill defines “recycled and recovered material” as scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid or nickel-cadmium batteries, or other spent batteries. The bill specifies the term includes minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use before becoming scrap. The term does not include hazardous waste.

The bill specifies that the relief from liability applies to causes of action accruing on or after July 1, 2015, and applies retroactively to causes of action accruing before July 1, 2015, for which a lawsuit has not been filed.

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There is an indeterminate positive fiscal impact to a person released from liability that may have been liable for cleanup costs.

C. Government Sector Impact:

The state may incur the costs associated with the cost of cleanup if no viable responsible party exists as a result of the release of liability.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Part of the definition of “recycled and recovered materials” specifies it does not include hazardous waste. According to the DEP, it is unclear what this phrase adds to the meaning of recycled and recovered materials.⁷

The bill is similar in concept to the liability defense found in the Superfund Recycling Equity Act. The federal law is more specific on how the liability defense can be claimed and when an individual is excluded from relying on the defense. In order to qualify for the federal defense, persons who arrange for recycling are required to demonstrate they took reasonable care to determine the material was sent to a facility that was in compliance. The bill also requires reasonable care in the handling and management of recycled and recovered materials but is not as specific as federal law. It is not clear what a court may require to determine whether a person has failed to exercise reasonable care with respect to the management and handling of the recycled materials, or whether the arrangement for recycling was not reasonably expected to be legitimate.⁸

VIII. Statutes Affected:

This bill substantially amends section 403.727, Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on March 31, 2015:

The CS provides clarity by removing the conflicting “notwithstanding clause.” It makes a technical correction to change the term “solid waste” to “hazardous substances.”

- B. **Amendments:**

None.

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

⁷ DEP, *Senate Bill 914 Agency Analysis*, 3 (Feb. 25, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

⁸ *Id.*

By the Committee on Environmental Preservation and Conservation;
and Senator Bean

592-03277-15

2015912c1

1 A bill to be entitled
2 An act relating to recycled and recovered materials;
3 amending s. 403.727, F.S.; exempting a person who
4 sells, transfers, or arranges for the transfer of
5 recycled and recovered materials from liability for
6 hazardous substances released or threatened to be
7 released from the receiving facility or site under
8 certain circumstances; defining the term "recycled and
9 recovered materials"; providing retroactive
10 application under certain circumstances; providing an
11 effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Subsection (4) of section 403.727, Florida
16 Statutes, is amended, present subsection (8) of that section is
17 redesignated as subsection (9), and a new subsection (8) is
18 added to that section, to read:

19 403.727 Violations; defenses, penalties, and remedies.—

20 (4) In addition to any other liability under this chapter,
21 and subject only to the defenses set forth in subsections (5),
22 (6), ~~and (7)~~, and (8):

23 (a) The owner and operator of a facility;

24 (b) Any person who at the time of disposal of any hazardous
25 substance owned or operated any facility at which such hazardous
26 substance was disposed of;

27 (c) Any person who, by contract, agreement, or otherwise,
28 arranged for disposal or treatment, or arranged with a
29 transporter for transport for disposal or treatment, of

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-03277-15

2015912c1

30 hazardous substances owned or possessed by such person or by any
31 other party or entity at any facility owned or operated by
32 another party or entity and containing such hazardous
33 substances; and

34 (d) Any person who accepts or has accepted any hazardous
35 substances for transport to disposal or treatment facilities or
36 sites selected by such person,

37
38 is liable for all costs of removal or remedial action incurred
39 by the department under this section and damages for injury to,
40 destruction of, or loss of natural resources, including the
41 reasonable costs of assessing such injury, destruction, or loss
42 resulting from the release or threatened release of a hazardous
43 substance as defined in the Comprehensive Environmental
44 Response, Compensation, and Liability Act of 1980, Pub. L. No.
45 96-510.

46 (8) In order to promote the reuse and recycling of
47 recovered materials and to remove potential impediments to
48 recycling, a person who sells, transfers, or arranges for the
49 transfer of recycled and recovered materials to a facility owned
50 or operated by another person for the purpose of reclamation,
51 recycling, manufacturing, or reuse of such materials is relieved
52 from liability for hazardous substances released or threatened
53 to be released from the receiving facility. This relief from
54 liability does not apply if the person fails to exercise
55 reasonable care with respect to the management and handling of
56 the recycled and recovered materials, or if the arrangement for
57 reclamation, recycling, manufacturing, or reuse of such
58 materials was not reasonably expected to be legitimate based on

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-03277-15

2015912c1

59 information generally available to the person at the time of the
60 arrangement. For the purpose of this subsection, the term
61 "recycled and recovered materials" means scrap paper; scrap
62 plastic; scrap glass; scrap textiles; scrap rubber, other than
63 whole tires; scrap metal; or spent lead-acid or nickel-cadmium
64 batteries or other spent batteries. The term includes minor
65 amounts of material incident to or adhering to the scrap
66 material as a result of its normal and customary use before
67 becoming scrap. The term does not include hazardous waste. This
68 subsection applies to causes of action accruing on or after July
69 1, 2015, and applies retroactively to causes of action accruing
70 before July 1, 2015, for which a lawsuit has not been filed.

71 Section 2. This act shall take effect July 1, 2015.



The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 31, 2015

I respectfully request that **Senate Bill #912**, relating to Recycled and Recovered Materials, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1172

INTRODUCER: Regulated Industries Committee and Senator Latvala

SUBJECT: Termination of a Condominium Association

DATE: April 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Caldwell</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1172 revises the requirements for the optional termination of condominiums.

Current law permits a condominium to be terminated at any time if a plan of termination is approved by 80 percent of the condominium's total voting interests and no more than 10 percent of the total voting interests reject the termination. The bill provides that, if more than 10 percent of the voting interests of a condominium reject a plan of termination, another termination may not be considered for 18 months.

The bill prohibits condominiums that have been created pursuant to the condominium conversion procedures in Part VI of ch. 718, F.S., from undertaking an optional plan of termination until 7 years after the conversion.

The bill provides the following conditions and limitations for the termination of a condominium if at the time the plan of termination is recorded at least 80 percent of the total voting interests are owned by a bulk owner which would be considered an insider under s. 726.102, F.S., and no sale of the terminated condominium property to an unrelated third party is contemplated:

- Unit owners must be allowed to retain possession of units and lease their former units;
- Any unit owner whose unit was granted homestead exemption must be paid a relocation payment equal to 1 percent of the termination proceeds allocated to the unit;
- Unit owners other than the developer must be paid at least 100 percent of the fair market value of their units as determined by one or more independent appraisers;

- Dissenting or objecting owners must be paid 110 percent of the purchase price, or 110 percent of fair market value, whichever is greater; and
- The outstanding first mortgages of all third-party unit owners must be satisfied in full.

The bill provides timeframes for objections to the plan of termination, including plans approved at a meeting and plans approved by a written consent or joinder.

The bill permits unit owners to contest a plan of termination by petitioning the Division of Florida Condominiums, Timeshares, and Mobile Homes for mandatory nonbinding arbitration. It deletes the unit owners' right to contest the plan of termination in a court by initiating a summary procedure pursuant to s. 51.011, F.S. It provides that unit owners may contest the fairness and reasonableness of the apportionment of the proceeds from the sale, that the first mortgages of unit owners will not be fully satisfied, or that the required vote was not obtained.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Condominium

A condominium is a “form of ownership of real property created pursuant to [ch. 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.”¹ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.² A declaration is like a constitution in that it:

Strictly 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.³

A declaration “may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.”⁴ A declaration of condominium may be amended as provided in the declaration.⁵ If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.⁶ Condominiums are administered by a board of directors referred to as a “board of administration.”⁷

Section 718.103(3), F.S., defines the term “association property” to mean:

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

⁴ Section 718.104(5), F.S.

⁵ See s. 718.110(1)(a), F.S.

⁶ Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

⁷ Section 718.103(4), F.S.

that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.

Section 718.103(8), F.S., defines the term “common elements” to mean the portions of the condominium property not included in the units.

Section 718.103(13), F.S., defines the term “condominium property” to mean:

the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

Section 718.103(16), F.S., defines a developer as one “who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business” There are two classes of developers: those who create the condominium by executing and recording the condominium documents and those who offer condominium units for sale or lease in the ordinary course of business.

Section 718.103(10), F.S., defines “voting interests” to mean:

the voting rights distributed to the association members pursuant to s. 718.104(4)(j).⁸ In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium.

Community Associations – Penalties and Suspension of Voting Right

Condominium associations may levy fines against members of the association who violate the association's rules or other governing documents.⁹ After consideration by a committee of other members who are not board members or persons residing in the board member's household, the association may issue a fine that may not exceed \$100 per violation, or \$1000 in the aggregate. If a member is more than 90 days delinquent on a monetary obligation, which may include a fine, unpaid assessments, or other monetary obligation, the association may suspend the unit owner's right to use common elements, facilities, or areas and may also suspend his or her voting rights.¹⁰

⁸ Section 718.104(4)(j), F.S., requires the declaration of condominium to include unit owners' membership and voting rights in the association.

⁹ Section 718.303(3), F.S.

¹⁰ *Id.*

Termination of a Condominium

Termination Because of Economic Waste or Impossibility

Section 718.117, F.S., provides for the termination of condominiums when the continued operation of the condominium would constitute economic waste or would be impossible to operate or reconstruct a condominium. To terminate the condominium, the required vote is the lesser of the lowest percentage of voting interests needed to amend the declaration or as otherwise provided in the declaration for termination of the condominium.¹¹ The criteria for economic waste or impossibility are:

- The total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all units in the condominium after completion of the repairs; or
- It becomes impossible to operate or reconstruct a condominium in its prior physical configuration because of land-use laws or regulations.

If 75 percent or more of the condominium units are timeshare units, the condominium may be terminated by a plan of termination that is approved by 80 percent of the total voting interests of the association and the holders of 80 percent of the original principal amount of outstanding recorded mortgage liens of timeshare estates in the condominium, unless the declaration provides for a lower voting percentage.¹²

Optional Termination

Section 718.117(3), F.S., provides an optional termination procedure with a lower vote threshold. Regardless of whether continued operation would constitute economic waste or would be impossible, the condominium may be terminated if approved by at least 80 percent of the total voting interests of the condominium, provided that not more than 10 percent of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections thereto.

Exemption

Section 718.117(4), F.S., provides that a plan of termination is not an amendment subject to s. 718.110(4), F.S., which relates to amendments that may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium.

Plan of Termination

Section 718.117(9), F.S., provides the plan for termination must be a written document executed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee. The plan may provide that each unit owner retains the exclusive right of possession to the portion of the real estate that formerly constituted the unit, in which case the

¹¹ Section 718.117(2)(a), F.S.

¹² Section 718.117(2)(b), F.S.

plan must specify the conditions of possession.¹³ In the case of a conditional termination, the plan must specify the conditions for termination. A conditional plan will not vest title in the termination trustee until the plan and a certificate executed by the association with the formalities of a deed have been recorded that confirm the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the voting interests.¹⁴ The provisions required in the plan of termination are provided in ss. 718.117(10) and (11), F.S.

The plan of termination must be recorded before it can take effect and is effective only when recorded or at a later date specified in the plan.

A plan of termination that fails to receive the required approval cannot be recorded and a new attempt to terminate the condominium may not be proposed at a meeting or by solicitation for joinder and consent for 180 days after the date that the failed plan of termination was first given to all unit owners.

Allocation of Proceeds of Sale of Condominium Property

Section 718.117(12), F.S, provides for the distribution of the proceeds of sale. Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium property, the plan must first apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair-market values immediately before the termination. The market values are to be determined by one or more independent appraisers selected by the association or termination trustee. The value of the common elements is to be paid to the owners according to their proportionate share in the common elements.

Right to Contest

Section 718.117(16), F.S., provides that a unit owner or lienor may contest a plan of termination by initiating a summary procedure pursuant to s. 51.011, F.S.,¹⁵ within 90 days after the date the plan is recorded. If not contested within 90 days, a unit owner or lienor is barred from asserting or prosecuting a claim against the association, the termination trustee, any unit owner, or any successor in interest to the condominium property.

The person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable. The apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in s. 718.117(12), F.S. The court is required to determine the rights and interests of the parties and order the plan of termination to be implemented if it is fair and reasonable. If the court determines that the plan of termination is not fair and reasonable, it may

¹³ Section 718.117(11)(a), F.S.

¹⁴ Section 718.117(11)(b), F.S.

¹⁵ Section 51.011, F.S., specifies a summary procedure for actions that specifically provide for this procedure by statute or rule. Under the summary procedure, all defenses of law or fact are required to be contained in the defendant's answer which must be filed within 5 days after service of process of the plaintiff's complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within 5 days after service of the counterclaim. (Fla. R. Civ. Pro. 1.140, requires an answer, including any counterclaims, within 20 days after service of the complaint.) No other pleadings are permitted, and all defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery, and the procedure also provides for an immediate trial, if requested.

void the plan or may modify the plan to apportion the proceeds in a fair and reasonable manner. The prevailing party is entitled to recover reasonable attorney fees and costs.

Distressed Condominium Relief Act

The “Distressed Condominium Relief Act”¹⁶ in Part VII of ch. 718, F.S., defines the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties. Enacted in 2010,¹⁷ the act was intended to relieve developers, lenders, unit owners, and condominium associations from specified provisions of ch. 718, F.S., including warranty provisions, in order to enable economic opportunities for successor purchasers of distressed condominiums.¹⁸

Section 718.703(1), F.S., defines the term “bulk assignee” to mean a person who acquires more than seven condominium parcels in a single condominium as provided in s. 718.707, F.S., and receives an assignment of some or substantially all of the rights of the developer as an exhibit in the deed, as a separate instrument recorded in the public records in the county where the condominium is located, or pursuant to a final judgment or certificate of title at a foreclosure sale.

Section 718.703(2), F.S., defines the term “bulk buyer” as a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of developer rights other than the rights specified in this section.

Section 718.704(1), F.S., provides that a bulk assignee assumes all the duties and responsibilities of the developer, and specifies obligations for which the bulk assignee is not liable.

Section 718.707, F.S., specifies a time limit for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the parcels are acquired prior to July 1, 2016. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums and cooperatives are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) in accordance with ch. 718, F.S., and ch. 719, F.S. The division is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., and ch. 719, F.S., with respect to associations that are still under developer control.¹⁹ The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover control to the association, pursuant to ss. 718.301 and 719.301, F.S., respectively.²⁰ After control of the condominium or cooperative is transferred from the developer to the unit owners, the division’s jurisdiction is limited to

¹⁶ Sections 718.701 – 718.708, F.S.

¹⁷ Chapter 2010-174, L.O.F.

¹⁸ See s. 718.702, F.S.

¹⁹ Section 718.501(1), F.S., s. 719.501(1), F.S.

²⁰ *Id.*

investigating complaints related to financial issues, elections, and unit owner access to association records.²¹

As part of the division's authority to investigate complaints, ss. 718.501(1) and 719.501(1), F.S., authorize the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

III. Effect of Proposed Changes:

The bill amends s. 718.117, F.S., to revise the requirements for the optional termination of condominiums.

Optional Termination

The bill amends s. 718.117(3)(a), F.S., to provide that, in a vote on a plan of termination, the total voting interests of the condominium include all voting interests²² for the purpose of considering a plan of termination, and a voting interest of the condominium may not be suspended during the consideration of a plan of termination.

It provides that if more than 10 percent of the total voting interests of the condominium reject a plan of termination, another optional plan of termination may not be considered for 18 months after the date of rejection.

The bill deletes the provision in s. 718.117(3)(c), F.S., that optional termination provisions do not apply to condominiums in which 75 percent or more of the units are timeshare units.

Optional Terminations Following a Condominium Conversion

Section 718.117(3)(c), F.S., is created to prohibit a condominium that has been created pursuant to the condominium conversion procedures in Part VI of ch. 718, F.S.,²³ (conversion condominium) from undertaking an optional plan of termination until 7 years after the conversion.

Optional Terminations and Bulk Owners

Section 718.117(3)(d), F.S., is created and defines the term "bulk owner" to mean the single owner of such voting interests or an owner with a related entity or entities that would be considered insiders, as defined in s. 726.102, F.S.²⁴

²¹ *Id.*

²² Pursuant to s. 718.103(10), F.S., voting rights are those rights distributed to the unit owners in that condominium under the declaration of condominium.

²³ Part VI of ch. 718, F.S., provides the process for converting real property into the condominium form of ownership.

²⁴ Section 726.102, F.S., defines an "Insider" to include: "(a) If the debtor is an individual: 1. A relative of the debtor or of a general partner of the debtor; 2. A partnership in which the debtor is a general partner; 3. A general partner in a partnership described [above]. A corporation of which the debtor is a director, officer, or person in control; (b) If the debtor is a corporation: 1. A director of the debtor; 2. An officer of the debtor; 3. A person in control of the debtor; 4. A partnership in which the debtor is a general partner; 5. A general partner in a partnership described [above]. A relative of a general partner, director, officer, or person in control of the debtor. (c) If the debtor is a partnership: 1. A general partner in the debtor; 2. A

Sections 718.117(3)(d)1. – 5., F.S., are created to provide the conditions and limitation in a plan of termination of a condominium if at least 80 percent of the total voting interests at the time of recording the plan of termination are owned by a bulk owner. The conditions and limitations include the former unit owner's right to:

- Possess and lease the former unit;
- Relocation payments for homestead property;
- Compensation at fair market value as determined by an independent appraiser; and
- Mandated disclosures in the plan of termination.

Right of Possession and Lease Former Unit

Section 718.117(3)(d)1., F.S., provides procedures that permit a unit owner to maintain possession of his or her unit after a plan of termination has been approved. After the termination, if the units are offered for lease, each unit owner may lease his or her former unit and remain in possession of the unit for 12 months after the termination. The unit owner must make a written request to the termination trustee to rent the former unit. Any unit owner who fails to make a written request and sign a lease within 90 days after the approved plan of termination is recorded waives his or her right to retain possession of the unit. The unit owner must also sign the lease within 15 days after being presented with the lease or he or she also waives his or her right to retain possession of the unit, unless otherwise provided in the plan of termination.

Relocation Payments for Homestead Property

Section 718.117(3)(d)2., F.S., provides that any former unit owner whose unit was granted homestead exemption as of the date of the recording of the plan of termination must be paid a relocation payment equal to 1 percent of the termination proceeds allocated to the owner's former unit. The relocation payment must be paid by the single entity or related entities owning at least 80 percent of the voting interests. The relocation payment is in addition to any termination proceeds and must be paid within 10 days after the unit owner vacates the unit.

It is not clear whether this provision applies if the unit owners retains possession after termination as provided in s. 718.117(3)(b)1., F.S., in which case the relocation payments would be due within 10 days after the end of the unit owners post-termination lease.

Compensation

Section 718.117(3)(d)3., F.S., requires that all unit owners other than the bulk owner must be compensated with at least 100 percent of the fair market value of their units.

The allocation of the proceeds of the sale of condominium property to dissenting or objecting owners must be at 110 percent of the original purchase price, or at 110 percent of fair market value, whichever is greater. The fair market value must be determined by an independent appraiser. The independent appraiser must be selected by the termination trustee as of a date that is no earlier than 90 days before the date that the plan of termination is recorded.

relative of a general partner in, a general partner of, or a person in control of the debtor; 3. Another partnership in which the debtor is a general partner; 4. A general partner in a partnership described [above]. A person in control of the debtor. (d) An affiliate, or an insider of an affiliate as if the affiliate were the debtor. (e) A managing agent of the debtor.”

The bill defines the term “fair market value” to mean the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices.

Section 718.117(3)(d)4., F.S., provides that a plan of termination is not effective unless the outstanding first mortgages of all unit owners other than the bulk owner are satisfied in full before, or simultaneously with, the termination.

Mandated Disclosures in the Plan of Termination

The bill creates s. 718.117(3)(d)5., F.S., to require, before the plan of termination is presented to the unit owners, a written and sworn statement that includes the following disclosures:

- The identity of the person or entity that owns 50 percent or more of the units and if an artificial entity owns such units, the name of the natural person who manages or controls the entity;
- The identity of the person or entity that owns or controls, directly or indirectly, 20 percent or more of the bulk owners and if an artificial entity constitutes a bulk owner, the name of the natural person who manages or controls the entity;
- The units acquired by any bulk owner, the date of their acquisition, and the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit; and
- The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner whose identity must be disclosed.

Exemption

Section 718.117(4), F.S., is amended to provide that an amendment to a declaration to conform the declaration to s. 718.117, F.S., is not an amendment subject to the notice and vote requirements in s. 718.110(4), F.S., and may be approved by the lesser of 80 percent of the voting interests or the percentage of the voting interests required to amend the declaration.

Plan of Termination

The bill amends s. 718.117(9), F.S., which provides the process for a unit owner to reject or object to a plan of termination.

If the vote on the plan of termination is at a meeting of the unit owners, a vote to reject the plan must be made in person or by proxy, or by delivering a written rejection to the association before or at the meeting.

If the plan of termination is approved by written consent or joinder without a meeting of the unit owners, an objection to the plan must be made by written objection within 20 days after the date the association notifies the non-consenting owners that the plan of termination was approved by written action in lieu of a unit owner meeting.

The bill amends s. 718.117(11), F.S., to provide that, unless the plan of termination expressly authorizes a unit owner or other person to retain the exclusive right to possess the unit or to use the common elements of the condominium after termination, all such rights in the unit or common elements automatically terminate on the effective date of termination. All leases, occupancy agreements, subleases, licenses, or other agreements for the use or occupancy of any unit or common elements of the condominium automatically terminate on the effective date of termination unless the plan expressly provides otherwise. The plan must specify the terms and conditions of occupancy if the plan expressly authorizes a unit owner or other person to retain exclusive right of possession after termination.

The bill deletes the provision that, in a partial termination, title to the surviving units and common elements that remain part of the condominium property and vested in the ownership shown in the public records and do not vest in the termination trustee.

The bill creates s. 718.117(11)(c), F.S., to permit a plan of termination to be withdrawn or amended by the same percentage required for approval.

The bill creates s. 718.117(11)(d), F.S., to permit a termination trustee to correct a scrivener's error in the plan of termination, and to require that the amended plan be executed in the same manner as a deed.

Allocation of Proceeds of Sale

The bill amends s. 718.117(12)(a), F.S., to provide that the plan of termination may require separate valuations for the common elements. It deletes the requirement that the declaration expressly provide for the allocation of the proceeds of sale of condominium property and apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair market values immediately before the termination by an independent appraiser. The bill provides that if the common elements are not separated, it is presumed that the common elements have no independent value and are included in the valuation of the unit.

The bill amends s. 718.117(12)(d), F.S., to require the lienholder of a unit to provide the termination trustee, within 30 days of the trustee's written request, with a statement confirming the outstanding obligations of the unit owner secured by the lien.

The bill amends s. 718.117(12)(e), F.S., to permit the termination trustee to setoff against, and reduce the share of, termination proceeds allocated to a unit by the following amounts, which may include attorney fees and costs:

- Unpaid assessments, taxes, late fees, interest, fines, charges, and other amounts owed for the unit;
- Costs of clearing title to the unit;
- Costs of removing persons from the unit;
- Costs related to breaches of the plan of termination by the owner and others related to the owner;
- Costs related to the removal of personal property; and

- Costs related to the appointment of a receiver or attorney ad litem acting for the unit owner if the unit owner cannot be located.

Right to Contest a Plan of Termination

Section 718.117(16), F.S., permit unit owners contest a plan of termination by petitioning the division for mandatory nonbinding arbitration pursuant s. 718.1255, F.S., which provides for the mediation and arbitration of disputes between the condominium association and unit owners.

The bill deletes the option for unit owners to contest the termination by initiating a summary procedure pursuant to s. 51.011, F.S.

The bill provides that a unit owner or lienor's right to contest a plan of termination is limited to contesting only the fairness and reasonableness of the apportionment of the proceeds from the sale, that the first mortgages of all unit owners have not or will not be fully satisfied at the time of termination, or that the required vote to approve the plan was not obtained. The contesting party bears the burden of proof.

Current law permits the court in a summary procedure to apportion the proceeds if it determines that the plan of termination is not fair and reasonable. The bill permits the arbitrator to void a plan of termination if it is determined that the plan was not properly approved. Any challenge to a plan, other than a challenge that the required vote was not obtained, does not affect title to the property or the vesting of the condominium property in the trustee. Challenges to the plan are limited to claims against the proceeds of the plan.

The bill amends s. 718.1255(1)(a), F.S., to include a plan of termination under s. 718.117, F.S., within the types of disputes that the division may arbitrate.

Effective Date

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Condominium declarations are contracts. If this bill has the effect of re-writing previously recorded declarations that have termination provisions or that implement the protections provided by s. 718.110(4), F.S., the bill may be an unconstitutional impairment of obligation of contract, under s. 10, Art. I, Fla. Const., which provides in relevant part, “No . . . law impairing the obligation of contracts shall be passed.” This provision empowers the courts to strike laws that retroactively burden or alter contractual relations. Article I, s. 10 of the United States Constitution provides in relevant part that “No state shall . . . pass any . . . law impairing the obligation of contracts.”

In *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979), the court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The court set forth several factors in balancing whether the state law has in fact operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. The court stated that if there is minimal alteration of contractual obligations the inquiry can end at its first stage. Severe impairment can push the inquiry to a careful examination of the nature and purpose of the state legislation. The factors to be considered are:

- Whether the law was enacted to deal with a broad, generalized economic or social problem;
- Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- Whether the effect on the contractual relationships is temporary or whether it is severe, permanent, immediate, and retroactive.²⁵

The court in *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355 (Fla. 1984), also adopted the method used in *Pomponio*. The court stated that the method required a balancing of a person’s interest not to have his contracts impaired with the state’s interest in exercising its legitimate police power.

Adopting the method of analysis used by the U.S. Supreme Court, the court outlined the main factors to be considered in applying this balancing test.

- The threshold inquiry is “whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.”²⁶ The severity of the impairment increases the level of scrutiny.
- In determining the extent of the impairment, the court considered whether the industry the complaining party entered has been regulated in the past. This is a consideration because if the party was already subject to regulation at the time the

²⁵ *Pomponio*, 378 So. 2d at 779.

²⁶ *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (quoting *Allied Structural Steel Co., v. Spannaus*, 438 U.S. 234, 244 (1978)).

contract was entered, then it is understood that it would be subject to further legislation upon the same topic.²⁷

- If the state regulation constitutes a substantial impairment, the state needs a significant and legitimate public purpose behind the regulation.²⁸
- Once the legitimate public purpose is identified, the next inquiry is whether the adjustment of the rights and responsibilities of the contracting parties are appropriate to the public purpose justifying the legislation.²⁹

The bill addresses termination of a condominium and is therefore permanent and retroactive in nature because it could change a plan of termination originally entered into in the declaration. Thus, as to the threshold inquiry, at least on an as-applied-basis, the bill might operate as a substantial impairment of a contractual relationship. However, the bill does so by providing an equitable method of termination following a natural disaster or in other circumstances that fully values the interests of each unit, as well as the common elements. The bill also eliminates the ability of an owner or a small minority of owners from extracting an excessive portion of the termination proceeds at the expense of the other unit owners in the community.

Condominiums were created by statute and therefore the law operates in an area that is already subject to extensive regulation.

The legislative purpose of the statute seems to indicate that the law was enacted to deal with broad economic problems by stating that the Legislature finds that it is contrary to the public policy of the state to require the continued operation of a condominium when to do so would constitute economic waste or when the ability to do so is made impossible by law or regulation.

The last inquiry, whether the adjustment of the rights and responsibilities of the contracting parties are appropriate to the public purpose justifying the legislation, could be true for the “economic waste or impossibility” method of approving a plan of termination. Where there are situations involving economic waste or impossibility, the adjustments of the rights of condominium owners concerning approval of termination of the condominium form of ownership may seem as reasonable and of a character appropriate to the Legislature’s findings for this legislation. The other methods for approving a plan of termination may be considered unreasonable because in some circumstances they could be used for any reason to override the provisions of the declaration. Nevertheless, the adjustment of the rights and responsibilities of the contracting parties may be reasonable and appropriate because these other methods address deficiencies in the current law. As previously discussed, the current law, s. 718.117(7), F.S., places unit holders in the position of not being able to receive the market value of their investments and allowing one or more owners to withhold approval

²⁷ *Id.* (citing *Allied Structural Steel Co.*, 438 U.S. at 242, n 13).

²⁸ *Id.*

²⁹ *Id.*

for the sale of the property³⁰ (after termination of the condominium) to obtain a disproportionate share of the proceeds.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 718.117(3)(d)2., F.S., entitles any former unit owner whose unit was granted homestead exemption as of the date of the recording of the plan of termination to be paid a relocation payment equal to 1 percent of the termination proceeds allocated to the owner's former unit. Section 718.117(3)(d)3., F.S., requires that all unit owners who are not a bulk owner must be compensated at least 100 percent of the fair market value of their units. The allocation of the proceeds of the sale of condominium property to dissenting or objecting owners must be 110 percent of the purchase price, or 110 percent of fair market value, whichever is greater.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

On lines 345 through 348, the sentence should read:

If the arbitrator determines that the plan was not properly approved, or that the procedures to adopt the plan were not properly followed, he or she may void the plan or grant other relief he or she deems just and proper.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 718.117 and 718.11255 of the Florida Statutes.

³⁰ After termination of the condominium form of ownership, the current law, s. 718.117(7), F.S., provides that the property is owned by the unit owners in the same shares as each owner previously owned in the common elements, which is typically based on the square footage of the unit, not the market value. Because all of the property is owned as tenants in common after the termination of the condominium form of ownership, one or more owners could withhold approval for the sale of the property to extract a disproportionate share of the proceeds.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Regulated Industries on March 24, 2015:

The committee substitute (CS):

- Revises the title of the bill from an “act relating to condominiums” to an “act relating to termination of a condominium association;”
- Amend s. 718.117(3), F.S., to provide that, if more than 10 percent of the voting interests of a condominium to reject a plan of termination, another termination may not be considered for 18 months instead of 36 months in the bill;
- Deletes the provision in s. 718.117(3)(c), F.S., that optional termination provisions do not apply to condominiums in which 75 percent or more of the units are timeshare units;
- Creates s. 718.117(3)(d), F.S., to define the term bulk owner;
- Amends s. 718.117(3)(d), F.S., to provide conditions for the termination of a condominium if at least 80 percent of the total voting interests at the time of recording the plan of termination are owned by a bulk owner. It does not limit the condition to when at least 80 percent of the voting interests are owned by bulk buyer or assignee or a related entity which would be considered an insider under and no sale of the terminated condominium property to an unrelated third party is contemplated;
- Amends s. 718.117(3)(d)3., F.S., to require that all unit owners other than the bulk owner must be compensated at least 100 percent of the fair market value of their units. It deletes the reference to third-party unit owners;
- Amends s. 718.117(3)(d)3., F.S., to require that the fair market value must be determined by an independent appraiser, selected by the termination trustee, as of a date that is no earlier than 90 days before the date that the plan of termination is recorded;
- Creates s. 718.117(3)(d)5., F.S., to require a written and sworn statement of disclosures before the plan of termination is presented to the unit owners;
- Amends s. 718.117(9), F.S., and does not amend s. 718.117(3), F.S., to provide the process for a unit owner to reject or object to a plan of terminations;
- Amends s. 718.117(11), F.S., to provide for the termination of possession rights by the former unit owner, including occupancy agreements, subleases, licenses, or other agreements, after the approval of a plan of termination, unless expressly authorized in the plan of termination. It also deletes the provision that, in a partial termination, title to the surviving units and common elements that remain part of the condominium property and vested in the ownership shown in the public records and do not vest in the termination trustees;
- Creates s. 718.117(11)(c), F.S., to permit a plan of termination to be withdrawn or amended by the same percentage required for approval;
- Creates s. 718.117(11)(c), F.S., to permit a termination trustee to correct a scrivener’s error in the plan of termination, and to require that the amended plan must be executed in the same manner as a deed;
- Amends s. 718.117(12), F.S., to provide that the plan of termination may require separate valuations for the common elements. It deletes the requirement that the

declaration must expressly provide for the allocation of the proceeds of sale of condominium property and apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair market values immediately before the termination by an independent appraiser;

- Amends s. 718.117(12)(d), F.S., to require the lienholder of a unit to provide the termination trustee, within 30 days of the trustee's written request, with a statement confirming the outstanding obligations of the unit owner secured by the lien;
- Amends s. 718.117(12)(e), F.S., to permit the termination trustee to setoff against and reduce the share of, termination proceeds allocated to a unit by the amounts provided, which may include attorney fees and costs;
- Amends s. 718.117(16), F.S., to permit unit owners to contest a plan of termination by petitioning the division for mandatory nonbinding arbitration pursuant s. 718.1255, F.S. It deletes the option for unit owners to contest the termination by initiating a summary procedure pursuant to s. 51.011, F.S.; and
- Amends s. 718.1255(1)(a), F.S., to include a plan of termination under s. 718.117, F.S., within the types of disputes that the division may arbitrate.

B. Amendments:

None.



168688

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Simpson) recommended the following:

Senate Amendment

Delete lines 28 - 184

and insert:

interests of the condominium if ~~no more than~~ 10 percent or more
of the total voting interests of the condominium have rejected
the plan of termination by negative vote or by providing written
objections.

(a) The termination of the condominium form of ownership is
subject to the following conditions:

1. The total voting interests of the condominium must



168688

12 include all voting interests for the purpose of considering a
13 plan of termination. A voting interest of the condominium may
14 not be suspended for any reason when voting on termination
15 pursuant to this subsection.

16 2. If 10 percent or more of the total voting interests of
17 the condominium reject a plan of termination, a subsequent plan
18 of termination pursuant to this subsection may not be considered
19 for 18 months after the date of the rejection.

20 (b) This subsection also does not apply to any condominium
21 created pursuant to part VI of this chapter until 5 years after
22 the recording of the declaration of condominium for the
23 condominium unless there are no objections to the plan of
24 termination ~~This subsection does not apply to condominiums in~~
25 ~~which 75 percent or more of the units are timeshare units.~~

26 (c) For purposes of this subsection, the term "bulk owner"
27 means the single holder of such voting interests or an owner
28 together with a related entity or entities that would be
29 considered insiders, as defined in s. 726.102, holding such
30 voting interests. If the condominium association is a
31 residential association proposed for termination pursuant to
32 this section and, at the time of recording the plan of
33 termination, at least 80 percent of the total voting interests
34 are owned by a bulk owner, the plan of termination is subject to
35 the following conditions and limitations:

36 1. If the former condominium units are offered for lease to
37 the public after the termination, each unit owner in occupancy
38 immediately before the date of recording of the plan of
39 termination may lease his or her former unit and remain in
40 possession of the unit for 12 months after the effective date of



168688

41 the termination on the same terms as similar unit types within
42 the property are being offered to the public. In order to obtain
43 a lease and exercise the right to retain exclusive possession of
44 the unit owner's former unit, the unit owner must make a written
45 request to the termination trustee to rent the former unit
46 within 90 days after the date the plan of termination is
47 recorded. Any unit owner who fails to timely make such written
48 request and sign a lease within 15 days after being presented
49 with a lease is deemed to have waived his or her right to retain
50 possession of his or her former unit and is required to vacate
51 the former unit upon the effective date of the termination,
52 unless otherwise provided in the plan of termination.

53 2. Any former unit owner whose unit was granted homestead-
54 exemption status by the applicable county property appraiser as
55 of the date of the recording of the plan of termination shall be
56 paid a relocation payment in an amount equal to 1 percent of the
57 termination proceeds allocated to the owner's former unit. Any
58 relocation payment payable under this subparagraph shall be paid
59 by the single entity or related entities owning at least 80
60 percent of the total voting interests. Such relocation payment
61 is in addition to the termination proceeds for such owner's
62 former unit and shall be paid no later than 10 days after the
63 former unit owner vacates his or her former unit.

64 3. All unit owners other than the bulk owner shall be
65 compensated at least 100 percent of the fair market value of
66 their respective units. The fair market value shall be
67 determined by an independent appraiser, selected by the
68 termination trustee, as of a date that is no earlier than 90
69 days before the date that the plan of termination is recorded.



168688

70 For original purchasers from the developer who dissent or object
71 to the plan of termination, the fair market value for the unit
72 owner dissenting or objecting may not be less than the original
73 purchase price paid for the unit. For purposes of this
74 subparagraph, the term "fair market value" means the price of a
75 unit that a seller is willing to accept and a buyer is willing
76 to pay on the open market in an arms-length transaction based on
77 similar units sold in other condominiums, including units sold
78 in bulk purchases but excluding units sold at wholesale or
79 distressed prices. The purchase price of units acquired in bulk
80 following a bankruptcy or foreclosure may not be considered for
81 purposes of determining fair market value.

82 4. The plan of termination must provide the manner by which
83 each first mortgage on a unit will be satisfied so that each
84 unit owner's obligation under a first mortgage is satisfied in
85 full at the time the plan of termination is implemented.

86 5. Before presenting a plan of termination to the unit
87 owners for consideration pursuant to this paragraph, the plan
88 must include the following written disclosures in a sworn
89 statement:

90 a. The identity of any person or entity that owns or
91 controls 50 percent or more of the units in the condominium and,
92 if the units are owned by an artificial entity or entities, a
93 disclosure of the natural person or persons who, directly or
94 indirectly, manage or control the entity or entities and the
95 natural person or persons who, directly or indirectly, own or
96 control 20 percent or more of the artificial entity or entities
97 that constitute the bulk owner.

98 b. The units acquired by any bulk owner, the date each unit



168688

99 was acquired, and the total amount of compensation paid to each
100 prior unit owner by the bulk owner, regardless of whether
101 attributed to the purchase price of the unit.

102 c. The relationship of any board member to the bulk owner
103 or any person or entity affiliated with the bulk owner subject
104 to disclosure pursuant to this subparagraph.

105 (d) If the members of the board of administration are
106 elected by the bulk owner, unit owners other than the bulk owner
107 may elect at least one-third of the members of the board of
108 administration before the approval of any plan of termination.

109 (4) EXEMPTION.—A plan of termination is not an amendment
110 subject to s. 718.110(4). In a partial termination, a plan of
111 termination is not an amendment subject to s. 718.110(4) if the
112 ownership share of the common elements of a surviving unit in
113 the condominium remains in the same proportion to the surviving
114 units as it was before the partial termination. An amendment to
115 a declaration to conform the declaration to this section is not
116 an amendment subject to s. 718.110(4) and may be approved by the
117 lesser of 80 percent of the voting interests or the percentage
118 of the voting interests required to amend the declaration.

119 (9) PLAN OF TERMINATION.—The plan of termination must be a
120 written document executed in the same manner as a deed by unit
121 owners having the requisite percentage of voting interests to
122 approve the plan and by the termination trustee. A copy of the
123 proposed plan of termination shall be given to all unit owners,
124 in the same manner as for notice of an annual meeting, at least
125 14 days prior to the meeting at which the plan of termination is
126 to be voted upon or prior to or simultaneously with the
127 distribution of the solicitation seeking execution of the plan



168688

128 of termination or written consent to or joinder in the plan. A
129 unit owner may document assent to the plan by executing the plan
130 or by consent to or joinder in the plan in the manner of a deed.
131 A plan of termination and the consents or joinders of unit
132 owners and, if required, consents or joinders of mortgagees must
133 be recorded in the public records of each county in which any
134 portion of the condominium is located. The plan is effective
135 only upon recordation or at a later date specified in the plan.
136 If the plan of termination fails to receive the required
137 approval, the plan shall not be recorded and a new attempt to
138 terminate the condominium may not be proposed at a meeting or by
139 solicitation for joinder and consent for 180 days after the date
140 that such failed plan of termination was first given to all unit
141 owners in the manner as provided in this subsection.

142 (a) If the plan of termination is voted on at a meeting of
143 the unit owners called in accordance with this subsection, any
144 unit owner desiring to reject the plan must do so by either
145 voting to reject the plan in person or by proxy, or by
146 delivering a written rejection to the association before or at
147 the meeting.

148 (b) If the plan of termination is approved by written
149 consent or joinder without a meeting of the unit owners, any
150 unit owner desiring to object to the plan must deliver a written
151 objection to the association within 20 days after the date that
152 the association notifies the nonconsenting owners, in the manner
153 provided in paragraph (15) (a), that the plan of termination has
154 been approved by written action in lieu of a unit owner meeting.

155 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL
156 TERMINATION; WITHDRAWAL; ERRORS.—



168688

157 (a) Unless the plan of termination expressly authorizes a
158 ~~may provide that each~~ unit owner or other person to retain
159 ~~retains the exclusive right to possess that of possession to the~~
160 portion of the real estate which formerly constituted the unit
161 after termination or to use the common elements of the
162 condominium after termination, all such rights in the unit and

By the Committee on Regulated Industries; and Senator Latvala

580-02817-15

20151172c1

A bill to be entitled

An act relating to termination of a condominium association; amending s. 718.117, F.S.; providing and revising procedures and requirements for termination of a condominium property; providing requirements for the rejection of a plan of termination; defining terms; providing applicability; providing and revising requirements relating to partial termination of a condominium property; authorizing a plan of termination to be withdrawn, modified, or amended under certain conditions; revising and providing requirements relating to the allocation of proceeds of the sale of condominium property; revising requirements relating to the right to contest a plan of termination; amending s. 718.1255, F.S.; revising the term "dispute"; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (3), (4), (9), (11), (12), and (16) of section 718.117, Florida Statutes, are amended to read:

718.117 Termination of condominium.—

(3) OPTIONAL TERMINATION.—Except as provided in subsection (2) or unless the declaration provides for a lower percentage, the condominium form of ownership may be terminated for all or a portion of the condominium property pursuant to a plan of termination approved by at least 80 percent of the total voting interests of the condominium if no more than 10 percent of the total voting interests of the condominium have rejected the plan

Page 1 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02817-15

20151172c1

of termination by negative vote or by providing written objections, subject to the following conditions:

(a) The total voting interests of the condominium must include all voting interests for the purpose of considering a plan of termination. A voting interest of the condominium may not be suspended for any reason when voting on termination pursuant to this subsection.

(b) If more than 10 percent of the total voting interests of the condominium reject a plan of termination, a subsequent plan of termination pursuant to this subsection may not be considered for 18 months after the date of the rejection.

(c) This subsection also does not apply to any condominium created pursuant to part VI of this chapter until 7 years after the recording of the declaration of condominium for the condominium This subsection does not apply to condominiums in which 75 percent or more of the units are timeshare units.

(d) For purposes of this paragraph, the term "bulk owner" means the single holder of such voting interests or an owner together with a related entity or entities that would be considered insiders, as defined in s. 726.102, holding such voting interests. If the condominium association is a residential association proposed for termination pursuant to this section and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner, the plan of termination is subject to the following conditions and limitations:

1. If the former condominium units are offered for lease to the public after the termination, each unit owner in occupancy immediately before the date of recording of the plan of

Page 2 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02817-15 20151172c1

59 termination may lease his or her former unit and remain in
 60 possession of the unit for 12 months after the effective date of
 61 the termination on the same terms as similar unit types within
 62 the property are being offered to the public. In order to obtain
 63 a lease and exercise the right to retain exclusive possession of
 64 the unit owner's former unit, the unit owner must make a written
 65 request to the termination trustee to rent the former unit
 66 within 90 days after the date the plan of termination is
 67 recorded. Any unit owner who fails to timely make such written
 68 request and sign a lease within 15 days after being presented
 69 with a lease is deemed to have waived his or her right to retain
 70 possession of his or her former unit and is required to vacate
 71 the former unit upon the effective date of the termination,
 72 unless otherwise provided in the plan of termination.

73 2. Any former unit owner whose unit was granted homestead-
 74 exemption status by the applicable county property appraiser as
 75 of the date of the recording of the plan of termination shall be
 76 paid a relocation payment in an amount equal to 1 percent of the
 77 termination proceeds allocated to the owner's former unit. Any
 78 relocation payment payable under this subparagraph shall be paid
 79 by the single entity or related entities owning at least 80
 80 percent of the total voting interests. Such relocation payment
 81 is in addition to the termination proceeds for such owner's
 82 former unit and shall be paid no later than 10 days after the
 83 former unit owner vacates his or her former unit.

84 3. All unit owners other than the bulk owner shall be
 85 compensated at least 100 percent of the fair market value of
 86 their respective units. The fair market value shall be
 87 determined by an independent appraiser, selected by the

580-02817-15 20151172c1

88 termination trustee, as of a date that is no earlier than 90
 89 days before the date that the plan of termination is recorded.
 90 Notwithstanding subsection (12), the allocation of the proceeds
 91 of the sale of condominium property to owners of units
 92 dissenting or objecting to the plan of termination must be 110
 93 percent of the original purchase price, or 110 percent of fair
 94 market value, whichever is greater. For purposes of this
 95 subparagraph, the term "fair market value" means the price of a
 96 unit that a seller is willing to accept and a buyer is willing
 97 to pay on the open market in an arms-length transaction based on
 98 similar units sold in other condominiums, including units sold
 99 in bulk purchases but excluding units sold at wholesale or
 100 distressed prices. The purchase price of units acquired in bulk
 101 following a bankruptcy or foreclosure may not be considered for
 102 purposes of determining fair market value.

103 4. A plan of termination is not effective unless the plan
 104 provides that outstanding first mortgages of all unit owners
 105 other than the bulk owner are satisfied in full before, or
 106 simultaneously with, the termination.

107 5. Before presenting a plan of termination to the unit
 108 owners for consideration pursuant to this paragraph, the plan
 109 must include the following written disclosures in a sworn
 110 statement:

111 a. The identity of any person or entity that owns or
 112 controls 50 percent or more of the units in the condominium and,
 113 if the units are owned by an artificial entity or entities, a
 114 disclosure of the natural person or persons who, directly or
 115 indirectly, manage or control the entity or entities and the
 116 natural person or persons who, directly or indirectly, own or

580-02817-15

20151172c1

117 control 20 percent or more of the artificial entity or entities
 118 that constitute the bulk owner.

119 b. The units acquired by any bulk owner, the date each unit
 120 was acquired, and the total amount of compensation paid to each
 121 prior unit owner by the bulk owner, regardless of whether
 122 attributed to the purchase price of the unit.

123 c. The relationship of any board member to the bulk owner
 124 or any person or entity affiliated with the bulk owner subject
 125 to disclosure pursuant to this subparagraph.

126 (e) If the members of the board of administration are
 127 electd by the bulk owner, unit owners other than the bulk owner
 128 may elect at least one-third of the members of the board of
 129 administration before the approval of any plan of termination by
 130 the board.

131 (4) EXEMPTION.—A plan of termination is not an amendment
 132 subject to s. 718.110(4). In a partial termination, a plan of
 133 termination is not an amendment subject to s. 718.110(4) if the
 134 ownership share of the common elements of a surviving unit in
 135 the condominium remains in the same proportion to the surviving
 136 units as it was before the partial termination. An amendment to
 137 a declaration to conform the declaration to this section is not
 138 an amendment subject to s. 718.110(4) and may be approved by the
 139 lesser of 80 percent of the voting interests or the percentage
 140 of the voting interests required to amend the declaration.

141 (9) PLAN OF TERMINATION.—The plan of termination must be a
 142 written document executed in the same manner as a deed by unit
 143 owners having the requisite percentage of voting interests to
 144 approve the plan and by the termination trustee. A copy of the
 145 proposed plan of termination shall be given to all unit owners,

580-02817-15

20151172c1

146 in the same manner as for notice of an annual meeting, at least
 147 14 days prior to the meeting at which the plan of termination is
 148 to be voted upon or prior to or simultaneously with the
 149 distribution of the solicitation seeking execution of the plan
 150 of termination or written consent to or joinder in the plan. A
 151 unit owner may document assent to the plan by executing the plan
 152 or by consent to or joinder in the plan in the manner of a deed.
 153 A plan of termination and the consents or joinders of unit
 154 owners and, if required, consents or joinders of mortgagees must
 155 be recorded in the public records of each county in which any
 156 portion of the condominium is located. The plan is effective
 157 only upon recordation or at a later date specified in the plan.
 158 If the plan of termination fails to receive the required
 159 approval, the plan shall not be recorded and a new attempt to
 160 terminate the condominium may not be proposed at a meeting or by
 161 solicitation for joinder and consent for 180 days after the date
 162 that such failed plan of termination was first given to all unit
 163 owners in the manner as provided in this subsection.

164 (a) If the plan of termination is voted on at a meeting of
 165 the unit owners called in accordance with this subsection, any
 166 unit owner desiring to reject the plan must do so by either
 167 voting to reject the plan in person or by proxy, or by
 168 delivering a written rejection to the association before or at
 169 the meeting.

170 (b) If the plan of termination is approved by written
 171 consent or joinder without a meeting of the unit owners, any
 172 unit owner desiring to object to the plan must deliver a written
 173 objection to the association within 20 days after the date that
 174 the association notifies the nonconsenting owners, in the manner

580-02817-15

20151172c1

175 provided in paragraph (15) (a), that the plan of termination has
 176 been approved by written action in lieu of a unit owner meeting.

177 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL
 178 TERMINATION; WITHDRAWAL; ERRORS.—

179 (a) Unless the plan of termination expressly authorizes a
 180 may provide that each unit owner or other person to retain
 181 ~~retains~~ the exclusive right to possess that of possession to the
 182 portion of the real estate which formerly constituted the unit
 183 after termination or to use the common elements of the
 184 condominium after termination, all such rights in the unit or
 185 common elements automatically terminate on the effective date of
 186 termination. Unless the plan expressly provides otherwise, all
 187 leases, occupancy agreements, subleases, licenses, or other
 188 agreements for the use or occupancy of any unit or common
 189 elements of the condominium automatically terminate on the
 190 effective date of termination. If the plan expressly authorizes
 191 a unit owner or other person to retain exclusive right of
 192 possession for that portion of the real estate which formerly
 193 constituted the unit or to use the common elements of the
 194 condominium after termination, the plan must specify the terms
 195 and if the plan specifies the conditions of possession. In a
 196 partial termination, the plan of termination as specified in
 197 subsection (10) must also identify the units that survive the
 198 partial termination and provide that such units remain in the
 199 condominium form of ownership pursuant to an amendment to the
 200 declaration of condominium or an amended and restated
 201 declaration. In a partial termination, title to the surviving
 202 units and common elements that remain part of the condominium
 203 property specified in the plan of termination remain vested in

Page 7 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02817-15

20151172c1

204 the ownership shown in the public records and do not vest in the
 205 termination trustee.

206 (b) In a conditional termination, the plan must specify the
 207 conditions for termination. A conditional plan does not vest
 208 title in the termination trustee until the plan and a
 209 certificate executed by the association with the formalities of
 210 a deed, confirming that the conditions in the conditional plan
 211 have been satisfied or waived by the requisite percentage of the
 212 voting interests, have been recorded. In a partial termination,
 213 the plan does not vest title to the surviving units or common
 214 elements that remain part of the condominium property in the
 215 termination trustee.

216 (c) Unless otherwise provided in the plan of termination,
 217 at any time before the sale of the condominium property, a plan
 218 may be withdrawn or modified by the affirmative vote or written
 219 agreement of at least the same percentage of voting interests in
 220 the condominium as that which was required for the initial
 221 approval of the plan.

222 (d) Upon the discovery of a scrivener's error in the plan
 223 of termination, the termination trustee may record an amended
 224 plan or an amendment to the plan for the purpose of correcting
 225 the error, and the amended plan or amendment to the plan must be
 226 executed by the termination trustee in the same manner as
 227 required for the execution of a deed.

228 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
 229 PROPERTY.—

230 (a) Unless the declaration expressly provides for the
 231 allocation of the proceeds of sale of condominium property, the
 232 plan of termination may require separate valuations for ~~must~~

Page 8 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02817-15

20151172c1

233 ~~first apportion the proceeds between the aggregate value of all~~
 234 ~~units and the value of the common elements. However, in the~~
 235 ~~absence of such provision, it is presumed that the common~~
 236 ~~elements have no independent value but rather that their value~~
 237 ~~is incorporated into the valuation of the units based on their~~
 238 ~~respective fair market values immediately before the~~
 239 ~~termination, as determined by one or more independent appraisers~~
 240 ~~selected by the association or termination trustee. In a partial~~
 241 termination, the aggregate values of the units and common
 242 elements that are being terminated must be separately
 243 determined, and the plan of termination must specify the
 244 allocation of the proceeds of sale for the units and common
 245 elements being terminated.

246 (b) The portion of proceeds allocated to the units shall be
 247 ~~further~~ apportioned among the individual units. The
 248 apportionment is deemed fair and reasonable if it is ~~so~~
 249 ~~determined by the unit owners, who may approve the plan of~~
 250 ~~termination~~ by any of the following methods:

251 1. The respective values of the units based on the fair
 252 market values of the units immediately before the termination,
 253 as determined by one or more independent appraisers selected by
 254 the association or termination trustee;

255 2. The respective values of the units based on the most
 256 recent market value of the units before the termination, as
 257 provided in the county property appraiser's records; or

258 3. The respective interests of the units in the common
 259 elements specified in the declaration immediately before the
 260 termination.

261 (c) The methods of apportionment in paragraph (b) do not

580-02817-15

20151172c1

262 prohibit any other method of apportioning the proceeds of sale
 263 allocated to the units or any other method of valuing the units
 264 agreed upon in the plan of termination. ~~Any~~ The portion of the
 265 proceeds separately allocated to the common elements shall be
 266 apportioned among the units based upon their respective
 267 interests in the common elements as provided in the declaration.

268 (d) Liens that encumber a unit shall, unless otherwise
 269 provided in the plan of termination, be transferred to the
 270 proceeds of sale of the condominium property and the proceeds of
 271 sale or other distribution of association property, common
 272 surplus, or other association assets attributable to such unit
 273 in their same priority. In a partial termination, liens that
 274 encumber a unit being terminated must be transferred to the
 275 proceeds of sale of that portion of the condominium property
 276 being terminated which are attributable to such unit. The
 277 proceeds of any sale of condominium property pursuant to a plan
 278 of termination may not be deemed to be common surplus or
 279 association property. The holder of a lien that encumbers a unit
 280 at the time of recording a plan must, within 30 days after the
 281 written request from the termination trustee, deliver a
 282 statement to the termination trustee confirming the outstanding
 283 amount of any obligations of the unit owner secured by the lien.

284 (e) The termination trustee may setoff against, and reduce
 285 the share of, the termination proceeds allocated to a unit by
 286 the following amounts, which may include attorney fees and
 287 costs:

288 1. All unpaid assessments, taxes, late fees, interest,
 289 finances, charges, and other amounts due and owing to the
 290 association associated with the unit, its owner, or the owner's

580-02817-15 20151172c1

291 family members, guests, tenants, occupants, licensees, invitees,
 292 or other persons.

293 2. All costs of clearing title to the owner's unit,
 294 including, but not limited to, locating lienors, obtaining
 295 statements from such lienors confirming the outstanding amount
 296 of any obligations of the unit owner, and paying all mortgages
 297 and other liens, judgments, and encumbrances and filing suit to
 298 quiet title or remove title defects.

299 3. All costs of removing the owner or the owner's family
 300 members, guests, tenants, occupants, licensees, invitees, or
 301 other persons from the unit in the event such persons fail to
 302 vacate a unit as required by the plan.

303 4. All costs arising from, or related to, any breach of the
 304 plan by the owner or the owner's family members, guests,
 305 tenants, occupants, licensees, invitees, or other persons.

306 5. All costs arising out of, or related to, the removal and
 307 storage of all personal property remaining in a unit, other than
 308 personal property owned by the association, so that the unit may
 309 be delivered vacant and clear of the owner or the owner's family
 310 members, guests, tenants, occupants, licensees, invitees, or
 311 other persons as required by the plan.

312 6. All costs arising out of, or related to, the appointment
 313 and activities of a receiver or attorney ad litem acting for the
 314 owner in the event that the owner is unable to be located.

315 (16) RIGHT TO CONTEST.—A unit owner or lienor may contest a
 316 plan of termination by initiating a petition for mandatory
 317 nonbinding arbitration summary procedure pursuant to s. 718.1255
 318 ~~s. 51.011~~ within 90 days after the date the plan is recorded. A
 319 unit owner or lienor may only contest the fairness and

580-02817-15 20151172c1

320 reasonableness of the apportionment of the proceeds from the
 321 sale among the unit owners, that the first mortgages of all unit
 322 owners other than the bulk owner have not or will not be fully
 323 satisfied at the time of termination as required by subsection
 324 (3), or that the required vote to approve the plan was not
 325 obtained. A unit owner or lienor who does not contest the plan
 326 within the 90-day period is barred from asserting or prosecuting
 327 a claim against the association, the termination trustee, any
 328 unit owner, or any successor in interest to the condominium
 329 property. In an action contesting a plan of termination, the
 330 person contesting the plan has the burden of pleading and
 331 proving that the apportionment of the proceeds from the sale
 332 among the unit owners was not fair and reasonable or that the
 333 required vote was not obtained. The apportionment of sale
 334 proceeds is presumed fair and reasonable if it was determined
 335 pursuant to the methods prescribed in subsection (12). The
 336 arbitrator court shall determine the rights and interests of the
 337 parties in the apportionment of the sale proceeds and order the
 338 plan of termination to be implemented if it is fair and
 339 reasonable. If the arbitrator court determines that the
 340 apportionment of sale proceeds plan of termination is not fair
 341 and reasonable, the arbitrator court may void the plan or may
 342 modify the plan to apportion the proceeds in a fair and
 343 reasonable manner pursuant to this section based upon the
 344 proceedings and order the modified plan of termination to be
 345 implemented. If the arbitrator determines that the plan was not
 346 properly approved, or that the procedures to adopt the plan were
 347 not properly followed, it may void the plan or grant other
 348 relief it deems just and proper. The arbitrator shall

580-02817-15 20151172c1

349 automatically void the plan upon a finding that any of the
 350 disclosures required in subparagraph (3)(d)4. are omitted,
 351 misleading, incomplete, or inaccurate. Any challenge to a plan,
 352 other than a challenge that the required vote was not obtained,
 353 does not affect title to the condominium property or the vesting
 354 of the condominium property in the trustee, but shall only be a
 355 claim against the proceeds of the plan. In any such action, the
 356 prevailing party shall recover reasonable attorney attorney's
 357 fees and costs.

358 Section 2. Subsection (1) of section 718.1255, Florida
 359 Statutes, is amended to read:

360 718.1255 Alternative dispute resolution; voluntary
 361 mediation; mandatory nonbinding arbitration; legislative
 362 findings.—

363 (1) DEFINITIONS.—As used in this section, the term
 364 “dispute” means any disagreement between two or more parties
 365 that involves:

366 (a) The authority of the board of directors, under this
 367 chapter or association document to:

368 1. Require any owner to take any action, or not to take any
 369 action, involving that owner’s unit or the appurtenances
 370 thereto.

371 2. Alter or add to a common area or element.

372 (b) The failure of a governing body, when required by this
 373 chapter or an association document, to:

374 1. Properly conduct elections.

375 2. Give adequate notice of meetings or other actions.

376 3. Properly conduct meetings.

377 4. Allow inspection of books and records.

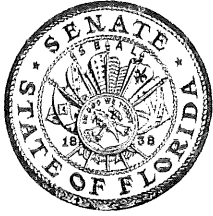
580-02817-15 20151172c1

378 (c) A plan of termination pursuant to s. 718.117.

379

380 “Dispute” does not include any disagreement that primarily
 381 involves: title to any unit or common element; the
 382 interpretation or enforcement of any warranty; the levy of a fee
 383 or assessment, or the collection of an assessment levied against
 384 a party; the eviction or other removal of a tenant from a unit;
 385 alleged breaches of fiduciary duty by one or more directors; or
 386 claims for damages to a unit based upon the alleged failure of
 387 the association to maintain the common elements or condominium
 388 property.

389 Section 3. This act shall take effect July 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA
20th District

March 24, 2015

The Honorable Miguel Diaz de la Portilla, Chair
Senate Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

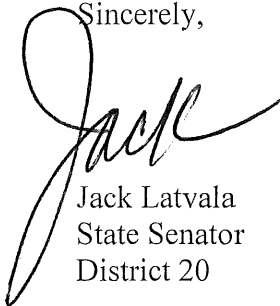
Dear Chairman Diaz de la Portilla:

I respectfully request consideration of Senate Bill 1172/Condominiums by the Senate Committee on Judiciary at your earliest convenience. The bill was referred favorably by the Regulated Industries Committee on March 24.

This bill will curtail the disagreeable practices of bulk buyers of condominiums as they attempt to convert them to apartments and will provide condo owners with equitable relief.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,


Jack Latvala
State Senator
District 20

This is a very important bill for me. Thanks!

Cc: Tom Cibula, Staff Director; Shirley Proctor, Administrative Assistant

REPLY TO:
 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA

20th District

April 6, 2015

The Honorable Miguel Diaz del la Portilla, Chair
Senate Judiciary Committee
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Diaz de la Portilla:

My bill on Condominium Conversions, Senate Bill 1172, is scheduled to be heard in the Judiciary Committee on Tuesday, April 7 at 4 p.m. at the same time as my bill SB288/Utilities Regulation is scheduled in the Communications, Energy, and Public Utilities Committee. I respectfully request that the House sponsor of the Condominium Conversion bill, Representative Chris Sprowls, be permitted to present the bill before the Judiciary Committee.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jack Latvala".

Jack Latvala
Senator, District 20

Cc: Tom Cibula, Staff Director; Shirley Proctor, Administrative Assistant

REPLY TO:

- 28133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee Judiciary

BILL: SB 7070

INTRODUCER: Appropriations Committee

SUBJECT: Mental Health and Substance Abuse

DATE: April 6, 2015

REVISED: _____

ANALYST

Brown/Crosier

Brown

STAFF DIRECTOR

Kynoch

Cibula

REFERENCE

JU

ACTION

AP Submitted as Committee Bill

Pre-meeting

I. Summary:

SB 7070 integrates the Marchman Act, which provides substance abuse intervention, clinical treatment, and recovery support services, into the Florida Mental Health Act, more commonly known as the Baker Act.

Marchman Act and Baker Act

Significant differences between current law and provisions in the bill are as follows:

Current law authorizes persons who are substance-abuse impaired to be held in protective custody for a 72-hour period. The bill extends the 72-hour period an additional 48 hours if a doctor determines that the individual would benefit from detoxification services.

Current law prohibits mentally ill individuals from being detained in a jail setting. The bill authorizes both mentally ill and substance-abuse impaired individuals to be temporarily detained in a jail or other detention facility while awaiting transport to an appropriate facility.

Current law requires individuals to receive an individualized treatment plan within 5 days after admission to a facility. This bill reduces this timeframe to 24 hours.

Current law authorizes minors seeking voluntary admission to a facility to consent to substance abuse treatment themselves, while treatment for mental illness requires the consent of a guardian. The bill requires a guardian and a minor to jointly provide consent, unless the minor is to be admitted to a substance abuse facility. At a treatment facility the minor may consent to treatment for substance abuse impairment upon documentation by a physician that the minor has a substance abuse impairment and that the physician established the ability of the minor to give consent.

The bill also addresses issues that are not addressed in current law. Specifically, the bill requires facilities to report the following to the DCF as soon as is reasonably possible:

- The death of an individual at the facility or that occurs within 72 hours after release;
- An injury sustained, or allegedly sustained by an individual at the facility if it requires medical treatment;
- The unauthorized departure or absence of an individual from a facility under an involuntary placement;
- A natural disaster or crisis situation that jeopardizes individual safety; or
- An allegation of sexual battery on an individual.

Additionally, the role of health care surrogates and proxies is recognized, and the bill provides them with the same ability to advocate as that granted to other representatives of an individual. The bill prohibits certain persons from serving as a representative or a guardian advocate of the individual, including if the person is a professional involved in assessment or treatment of the individual, or is the subject of an injunction in which the individual is the petitioner. Rights of representatives to advocate on behalf of an individual are specified.

Advance Directives

This bill establishes the “Mental Health and Substance Abuse Directives” Act, also known as the Jennifer Act. The purpose of the Jennifer Act is to enable persons at risk of need for future services based on mental illness or substance abuse impairment governed under ch. 394, F.S., to establish directives for care and treatment in advance of becoming incapacitated. The bill grants immunity to providers and facilities who act in good faith in providing treatment in accordance with an advance directive.

Forensic Hospital Diversion Pilot Program

This bill creates the Forensic Hospital Diversion Pilot Program, which replicates the model of the Miami-Dade Forensic Alternative Center into 3 additional counties. In addition to Miami-Dade, the DCF will implement the program in Alachua, Escambia, and Hillsborough Counties. The purpose of the program is to divert incarcerated defendants found mentally incompetent to proceed or not guilty by reason of insanity into a therapeutic setting which offers beds and community outpatient treatment.

II. Present Situation:

Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.¹ The Act authorized treatment programs for mental, emotional, and behavioral disorders. The Baker Act required programs to include comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to facilitate recovery. Additionally, the Baker Act provides protections and rights to individuals examined or treated for mental illness. Legal procedures are addressed for mental health examination and treatment,

¹ Chapter 71-131, Laws of Fla.; The Baker Act is contained in ch. 394, F.S.

including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

Mental illness creates enormous social and economic costs.² Unemployment rates for persons having mental disorders are high relative to the overall population.³ Rates of unemployment for people having a severe mental illness range between 60 percent and 100 percent.⁴ Mental illness increases a person's risk of homelessness in America threefold.⁵ Approximately 33 percent of the nation's homeless live with a serious mental disorder, such as schizophrenia, for which they are untreated.⁶ Often the combination of homelessness and mental illness leads to incarceration, which further decreases a person's chance of receiving proper treatment and leads to future recidivism.⁷

Marchman Act

In 1993, the Legislature adopted the Hal S. Marchman Alcohol and Other Drug Services Act. The Marchman Act provides a comprehensive continuum of accessible and quality substance abuse prevention, intervention, clinical treatment, and recovery support services. Services must be provided in the least restrictive environment to promote long-term recovery. The Marchman Act includes various protections and rights of patients served.

Comparison of the Marchman Act to the Baker Act

While the Baker Act is used to initiate approximately 136,000 involuntary examinations annually, the Marchman Act is used to initiate only an estimated 9,000 involuntary admissions per year.⁸ This disparity is likely attributable to two factors:

- The Marchman Act is much more complex and difficult to apply. This leads law enforcement, mental health professionals, and the courts to prefer the Baker Act, even when substance abuse impairment may be the chief presenting problem; and
- The Marchman Act allows facilities to turn clients away for a lack of capacity or lack of payor source, whereas Baker Act receiving facilities must accept any individual brought for involuntary examination.⁹

Individual Bill of Rights

Both the Marchman Act and the Baker Act provide an individual bill of rights.¹⁰ Rights in common include the right to dignity, right to quality of treatment, right to not be refused

² MentalMenace.com, *Mental Illness: The Invisible Menace; Economic Impact*, <http://www.mentalmenace.com/economicimpact.php> (last visited April 5, 2015).

³ MentalMenace.com, *Mental Illness: The Invisible Menace: More impacts and facts*, <http://www.mentalmenace.com/impactsfacts.php> (last visited April 5, 2015).

⁴ *Id.*

⁵ Family Guidance Center for Behavioral Health Care, *How does Mental Illness Impact Rates of Homelessness?*, (February 4, 2014) <http://www.familyguidance.org/how-does-mental-illness-impact-rates-of-homelessness/>.

⁶ *Id.*

⁷ *Id.*

⁸ Proposal to Streamline Baker Act and Marchman Act: Overview, pg. 1 (on file with the Senate Judiciary Committee).

⁹ *Id.*

¹⁰ Section 397.501, F.S., provides "Rights of Individuals" for individuals served through the Marchman Act; s. 394.459, F.S., provides "Rights of Individuals" for individuals served through the Baker Act.

treatment at a state-funded facility due to an inability to pay, right to communicate with others, right to care and custody of personal effects, and the right to petition the court on a writ of habeus corpus. The individual bill of rights also imposes liability for damages on persons who violate individual rights.¹¹ The Marchman Act bill of rights includes the right to confidentiality of clinical records. The individual is the only person who may consent to disclosure.¹² The Baker Act addresses confidentiality in a separate section of law and permits limited disclosure by the individual, a guardian, or a guardian advocate.¹³ The Marchman Act ensures the right to habeus corpus, which means that a petition for release may be filed with the court by an individual involuntarily retained or his or her parent or representative.¹⁴ In addition to the petitioners authorized in the Marchman Act, the Baker Act permits the DCF to file a writ for habeus corpus on behalf of the individual.¹⁵

Transportation to a Facility

The Marchman Act authorizes an applicant seeking to have a person admitted to a facility, the person's spouse or guardian, a law enforcement officer, or a health officer to transport the individual for an emergency assessment and stabilization.¹⁶

The Baker Act requires each county to designate a single law enforcement agency to transfer the person in need of services. If the person is in custody based on noncriminal or minor criminal behavior, the law enforcement officer will transport the person to the nearest receiving facility. If, however, the person is arrested for a felony the person must first be processed in the same manner as any other criminal suspect. The law enforcement officer must then transport the person to the nearest facility, unless the facility is unable to provide adequate security.¹⁷

The Marchman Act allows law enforcement officers, however, to temporarily detain substance-impaired persons in a jail setting. An adult not charged with a crime may be detained for his or her own protection in a municipal or county jail or other appropriate detention facility. Detention in jail is not considered to be an arrest, is temporary, and requires the detention facility to provide if necessary transfer of the detainee to an appropriate licensed service provider with an available bed.¹⁸ However, the Baker Act prohibits the detention in jail of a mentally ill person if he or she has not been charged with a crime.¹⁹

Voluntary Admission to a Facility

The Marchman Act authorizes persons who wish to enter treatment for substance abuse to apply to a service provider for voluntary admission. A minor is authorized to consent to treatment for

¹¹ Sections 397.501(10)(a) and 394.459(10), F.S.

¹² Section 397.501(7), F.S.

¹³ Section 394.4615(1) and (2), F.S.

¹⁴ Section 397.501(9), F.S.

¹⁵ Section 394.459(8)(a), F.S.

¹⁶ Section 397.6795, F.S.

¹⁷ Section 394.462(1)(f) and (g), F.S.

¹⁸ Section 397.6772(1), F.S.

¹⁹ Section 394.459(1), F.S.

substance abuse.²⁰ Under the Baker Act, a guardian of a minor must give consent for mental health treatment under a voluntary admission.²¹

When a person is voluntarily admitted to a facility, the emergency contact for the person must be recorded in the individual record.²² When a person is involuntarily admitted, contact information for the individual's guardian, guardian advocate, or representative, and the individual's attorney must be entered into the individual record.²³ The Marchman Act does not address emergency contacts.

The Baker Act requires an individualized treatment plan to be provided to the individual within 5 days after admission to a facility.²⁴ The Marchman Act does not address individualized treatment plans.

Involuntary Admission to a Facility

The Marchman Act provides that a person meets the criteria for involuntary admission if good faith reason exists that the person is substance abuse impaired and because of the impairment:

- Has lost the power of self-control with respect to substance abuse; and either
- Has inflicted, threatened to or attempted to inflict self-harm; or
- Is in need of services and due to the impairment, judgment is so impaired that the person is incapable of appreciating the need for services.²⁵

A person who meets the criteria for involuntary admission under the Marchman Act may be taken into protective custody by a law enforcement officer.²⁶ The person may consent to have the law enforcement officer transport the person to his or her home, a hospital, or a licensed detoxification or addictions receiving facility.²⁷ If the person does not consent, the law enforcement officer may transport the person without using unreasonable force.²⁸

A critical 72-hour period applies under both the Marchman and the Baker Act. Under the Marchman Act, a person may only be held in protective custody for a 72-hour period, unless a petition for involuntary assessment or treatment has been timely filed with the court within that timeframe to extend protective custody.²⁹ The Baker Act provides that a person cannot be held in a receiving facility for involuntary examination for more than 72 hours.³⁰ Within that 72-hour examination period, or, if the 72 hours ends on a weekend or holiday, no later than the next working day, one of the following must happen:

²⁰ Section 397.601(1) and (4)(a), F.S.

²¹ Section 394.4625(1)(a), F.S.

²² Section 394.4597(1), F.S.

²³ Section 394.4597(2), F.S.

²⁴ Section 394.459(2)(e), F.S.

²⁵ Section 397.675, F.S.

²⁶ Section 397.677, F.S.

²⁷ Section 397.6771, F.S.

²⁸ Section 397.6772(1), F.S.

²⁹ Section 397.6773(1) and (2), F.S.

³⁰ Section 394.463(2)(f), F.S.

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will resume custody;
- The patient must be released into voluntary outpatient treatment;
- The patient must be asked to give consent to be placed as a voluntary patient if placement is recommended; or
- A petition for involuntary placement must be filed in circuit court for outpatient or inpatient treatment.³¹

Under the Marchman Act, if the court grants the petition for involuntary admission, the person may be admitted for a period of 5 days to a facility for involuntary assessment and stabilization.³² If the facility needs more time, the facility may request a 7-day extension from the court.³³ Based on the involuntary assessment, the facility may retain the person pending a court decision on a petition for involuntary treatment.³⁴

Under the Baker Act, the court must hold a hearing on involuntary inpatient or outpatient placement within 5 working days after a petition for involuntary placement is filed.³⁵ The petitioner must show, by clear and convincing evidence all available less restrictive treatment alternatives are inappropriate and that the individual:

- Is mentally ill and because of the illness has refused voluntary placement for treatment or is unable to determine the need for placement; and
- Is manifestly incapable of surviving alone or with the help of willing and responsible family and friends, and without treatment is likely suffer neglect to such an extent that it poses a real and present threat of substantial harm to his or her well-being or substantial likelihood exists that in the near future he or she will inflict serious bodily harm on himself or herself or another person.³⁶

Mental Illness and Substance Abuse

According to the National Alliance on Mental Illness (NAMI), about 50 percent of persons with severe mental health disorders are affected by substance abuse.³⁷ NAMI also estimates that 29 percent of people diagnosed as mentally ill abuse alcohol or other drugs.³⁸ When mental health disorders are left untreated, substance abuse likely increases. When substance abuse increases, mental health symptoms often escalate as well or new symptoms are triggered. This could also be due to discontinuation of taking prescribed medications or the contraindications for substance abuse and mental health medications. When taken with other medications, mental health medications can become less effective.³⁹

³¹ Section 394.463(2)(i)4., F.S.

³² Section 397.6811, F.S.

³³ Section 397.6821, F.S.

³⁴ Section 397.6822, F.S.

³⁵ Sections 394.4655(6) and 394.467(6), F.S.

³⁶ Section 394.467(1), F.S.

³⁷ Donna M. White, OPCI, CACP, *Living with Co-Occurring Mental & Substance Abuse Disorders*, available at <http://psychcentral.com/blog/archives/2013/10/02/living-with-co-occurring-mental-substance>

³⁸ *Id.*

³⁹ *Id.*

Advance Directive for Mental Health or Substance Abuse Treatment

Florida law currently allows an individual to create an advance directive which designates a surrogate to make health care decisions for the individual and provides a process for the execution of the directive.⁴⁰ Current law also allows an individual to designate a separate surrogate to consent to mental health treatment for the individual if the individual is determined by a court to be incompetent to consent to treatment.⁴¹ A mental health or substance abuse treatment advance directive is much like a living will for health care.⁴² Acute episodes of mental illness temporarily destroy the capacity required to give informed consent and often prevent people from realizing they are sick, causing them to refuse intervention.⁴³ Even in the midst of acute episodes, many people do not meet commitment criteria because they are not likely to injure themselves or others and are still able to care for their basic needs.⁴⁴ If left untreated, acute episodes may spiral out of control before the person meets commitment criteria.⁴⁵

Miami-Dade Forensic Alternative Center

The Miami-Dade Forensic Alternative Center (MDFAC) opened in 2009 as a community-based, forensic commitment program. The MDFAC serves adults:

- Aged 18 years old and older;
- Who have been found by a court to be incompetent to proceed at trial due to serious mental illness or not guilty by reason of insanity for a second or third degree felony; and
- Who do not have a significant history of violence.⁴⁶

The MDFAC provides competency restoration and a continuum of care during commitment and after reentry into the community.⁴⁷

Since the 2011-2012 Fiscal Year, all but two of the persons served in the program were adjudicated incompetent to proceed at trial. The Center currently operates a 16-bed facility at a daily cost of \$284.81 per bed.⁴⁸

III. Effect of Proposed Changes:

Marchman Act and Baker Act

This bill adds concepts from the Marchman Act which relate to the commitment of a person having a substance abuse impairment into the Baker Act. As a conforming change, the bill

⁴⁰ Section 765.202, F.S.

⁴¹ Section 765.202(5), F.S.

⁴² Washington State Hospital Association, *Mental Health Advance Directives* (on file with the Senate Judiciary Committee).

⁴³ Judy A. Clausen, *Making the Case for a Model Mental Health Advance Directive Statute*, 14 YALE J. HEALTH POL'Y, L. & ETHICS 1, (Winter 2014).

⁴⁴ *Id.* at 17.

⁴⁵ *Id.*

⁴⁶ Department of Children and Families (DCF), *2015 Agency Legislative Bill Analysis* (March 4 2015) (on file with the Senate Judiciary Committee).

⁴⁷ Budget Subcommittee on Health and Human Services Appropriations, The Florida Senate, *Interim Report 2012-108, The Forensic Mental Health System* (September 2011).

⁴⁸ DCF, *supra* note 46, at 2.

repeals all provisions in current law which provide for the voluntary and involuntary civil commitment of a person for substance abuse impairment under the Marchman Act.

Chapter 394, F.S., will now govern the commitment, treatment, and care of persons with mental illness and substance abuse impairment, as the conditions are presented separately or co-occurring.

Service Providers (Sections 2 and 15)

The bill recognizes that treatment may be provided not just by a state or local provider but also by a facility, mental health professional, or other health care provider affiliated with the United States Department of Veterans Affairs or the United States Department of Defense. The V.A. may:

- Initiate and conduct involuntary examinations for treatment;
- Provide voluntary treatment;
- Petition for involuntary inpatient placement; and
- Provide involuntary inpatient placement.

Advanced registered nurse practitioners are included in the list of service providers eligible to serve individuals under ch. 394, F.S.

Individual Bill of Rights (Section 5)

The bill modifies the individual bill of rights.

Right to Dignity

Current law prohibits mentally ill persons taken into custody under the Baker Act from being detained in jail. This bill allows persons detained for either or both substance abuse and mental health treatment to be detained temporarily in a municipal or county jail. If a person is detained for purposes of protective custody and transfer, the detention facility must:

- Notify the nearest appropriate facility within 8 hours;
- Notify the nearest relative of a minor or of an adult, unless the adult requests otherwise; and
- Arrange for transport to the hospital or other receiving facility.

Right to Treatment

This bill clarifies that individuals must be provided the least restrictive appropriate available treatment.

In addition to a physical examination, individuals must be given a mental health evaluation by a psychiatrist, psychologist, or psychiatric nurse, within 24 hours after arrival if the person has not been released or discharged.

Right to Express and Informed Consent

The bill reduces from 5 days after admission to a facility to 24 hours, the time in which an individual treatment plan must be provided in writing to the individual. Service providers are

required to provide information and assist competent and willing individuals complete an advance directive.

The bill also expands the list of people who may be notified of an individual's admission to a facility to include a health care surrogate or proxy. Facilities providing services will be required to review any incidents resulting in an injury or alleged injury, allegations of sexual battery, and death, or unauthorized departure of an individual being held for involuntary examination or involuntary placement. Advance directives already in place must be honored, or the service provider must request a transfer of the individual to another facility.

Quality of Treatment

As soon as is reasonably possible, facilities must report to the DCF and the entity that manages the facility:

- The death of an individual which occurs while the person is at the facility or which occurs within 72 hours after release;
- An injury sustained, or allegedly sustained by an individual at the facility if it requires medical treatment, whether the injury is caused by an accident, self-inflicted, assault, abuse, neglect, or a suicide attempt;
- The unauthorized departure or absence of an individual from a facility in which he or she has been held involuntarily;
- A natural disaster or crisis situation that jeopardizes individual safety; or
- An allegation of sexual battery on an individual.

Communication, Abuse Reporting, and Visits

This bill adds to the list of persons authorized immediate access to the individual, unless access would be detrimental, a health care surrogate or proxy.

If access is restricted, the facility must document the reasons in the individual's record. Facility rules on communication must be the least restrictive possible.

Care and Custody of Personal Effects

Copies of an inventory of clothing and personal effects and the actual clothing and personal effects if appropriate, must be provided to the representative of the individual, including a health care surrogate or proxy.

Advance Directives

This bill includes advance directives in the individual bill of rights. A mental health or substance abuse treatment advance directive is a written document in which the principal provides instructions or preferences or appoints a surrogate to make decisions on behalf of the principal regarding mental health or substance abuse treatment, or both. The bill requires service providers to provide information on advance directives to individuals and to help competent and willing individuals complete an advance directive. Service providers must honor the advance directive.

Representatives and Notification in Case of Emergency (Section 6)

Individuals voluntarily admitted to a facility must be asked to identify a person to be notified in case of emergency. If an individual is involuntarily admitted, a health care surrogate or proxy's contact information is required, if appropriate.

The bill prohibits from serving as a representative or guardian advocate:

- A professional providing clinical services to the individual;
- The licensed professional who initiated the involuntary examination of the individual, if initiated by professional certificate;
- An employee, administrator, or board member of the facility providing examination or treatment;
- A person providing any substantial professional services to the individual;
- A creditor of the individual; and
- A person subject to a repeat violence, sexual violence, dating violence, or domestic violence injunction in which the individual is the petitioner.

The bill specifies rights of representatives, including the right to receive certain notices, have immediate access to the individual, and petition on behalf of the individual for a writ of habeus corpus or change of venue.

Clinical Records (Section 9)

The bill maintains the confidentiality of clinical records and adds a health care surrogate or proxy to the list of representatives who have access to the records and who may waive consent to confidentiality. The bill adds as another basis for release of records that a petition for involuntary placement is filed and the state attorney needs access to the records, solely to evaluate the allegations in the petition or to prosecute the petition, not for a criminal investigation or prosecution.

Transportation to a Facility (Section 10)

This bill requires the nearest receiving facility to accept a person who has engaged in either noncriminal behavior of a felony other than a forcible felony.

If the person has been arrested for a forcible felony, the law enforcement officer must first process the person the same as any other person arrested. The nearest receiving facility may not accept the person if the facility does not have adequate security.

A person who meets the criteria for voluntary admission may request transport to a mental health receiving facility, addictions receiving facility, or a detoxification facility.

Voluntary and Involuntary Admissions, Examinations, and Placement (Sections 6, 11, 12, 13, 14 and 16)***Admission and Transfer***

To receive treatment, an adult must provide and be competent to provide express and informed consent.

Current law authorizes minors who seek voluntary admission for treatment under the Marchman Act to consent to treatment. Under the Baker Act, a guardian of a minor must provide consent for voluntary admission.

A minor may only be admitted for treatment if the minor's guardian gives express and informed consent along with the minor. A minor may, however, be admitted to an addictions receiving facility or detoxification facility by giving consent without consent of a guardian, if a physician documents in the record that the minor has a substance abuse impairment and that the minor is capable of giving consent. The bill establishes criteria for a clinician to establish consent of a minor. If a minor's consent is not verified, a petition for involuntary inpatient placement must be filed within the court within 1 court working day after arrival or the minor must be released to his or her guardian.

The bill also allows an individual on involuntary status in a facility who has been assessed and certified competent to provide express and informed consent to be transferred to voluntary status immediately. If the individual is on voluntary status and meets the criteria for involuntary placement, he or she must be transferred to a designated receiving facility.

A request for discharge by an individual on voluntary status must be conveyed to a physician, psychologist, or psychiatrist within 12 hours. If the individual meets the criteria for involuntary placement and is transferred to a receiving facility, the facility must file a petition with the court for involuntary placement within 2 court working days. Otherwise, the individual must be discharged.

Involuntary Examination

The bill directs the court to include specific facts in an ex parte order that support its findings that the required criteria for involuntary examination has been met and to designate the most appropriate type of facility for treatment. Any behavior that provides the basis for the order must have occurred within the preceding 7 calendar days. Additionally, specified medical personnel may execute a certificate that finds an individual meets the criteria for involuntary examination, and the certificate must specify the most appropriate facility.

Current law allows a person to be held for involuntary examination for 72 hours. The bill extends the 72-hour period an additional 48 hours if a physician determines, under specific criteria, that the individual has ongoing symptoms of substance intoxication or substance withdrawal and would likely experience significant clinical benefit from detoxification services. One of the following actions must happen within the time period specified:

- The individual will be approved for release by an appropriate professional;
- The individual will be asked to consent to voluntary admission; or
- The receiving facility for involuntary inpatient or outpatient treatment will file a petition in circuit court.

Within 12 hours after a physician documents that an individual's emergency medical condition has stabilized or does not exist, the individual:

- Must be examined by a medical professional, and if found not to meet criteria for involuntary examination, must be released directly from the hospital providing the emergency medical services; or
- Must be transferred to a receiving facility if appropriate medical and mental health treatment is available, with 2-hours' notice provided to the receiving facility.

Crisis Stabilization Units

This bill lifts the cap in current law on the number of beds authorized in a crisis stabilization unit. A crisis stabilization unit provides emergency response regardless of ability to pay to persons who are involuntarily placed or who voluntarily seek help in stabilizing themselves. Current law limits the number of beds per facility to 30 beds.

Involuntary Outpatient Placement

An individual in an involuntary outpatient placement proceeding has the right to counsel, appointed by the court within 1 court working day after the petition is filed. The attorney must advocate the individual's expressed desires or must advocate for liberty and if outpatient treatment is ordered, the least restrictive treatment possible. At a hearing on involuntary outpatient placement, the state attorney has access to the individual's clinical records and witnesses in order to determine the sufficiency of the allegations contained in the petition. The court must notify the individual or his or her representative of the right to an independent expert examination.

Involuntary Inpatient Placement

An individual may be retained or involuntarily placed in a mental health receiving facility, an addictions receiving facility, or a detoxification facility, upon recommendation of two psychiatrists or a psychiatrist and a psychologist. If a petition seeks placement for substance abuse impairment only and an addictions receiving facility or a detoxification facility conducts the examination, recommendation may be made by a physician and a substance abuse professional.

The individual has the same right to counsel and level of advocacy as that which apply to individuals facing a petition for involuntary outpatient placement. The court must hold a hearing after a petition is filed within 5 court working days. The individual may waive his or her presence if the court establishes that waiver is knowing, intelligent, and voluntary. The bill clarifies that the state attorney in the case represents the state and not the facility that initiated the petition. The bill grants the state attorney access to the individual's clinical record.

Also, when the petition is for inpatient placement for substance abuse impairment and the individual is examined by an addictions receiving facility or a detoxification facility, a physician may provide the first opinion and a substance abuse qualified professional the second opinion needed to support the petition.

When a hearing is held on a petition to continue involuntary inpatient placement, the Division of Administrative Hearings must inform the individual of the right to an independent examination, provided by the court if the individual is unable to pay.

Jennifer Act (Sections 20 through 27)

Part IV of ch. 765, F.S. is redesignated from “Absence of Advance Directive” to “Mental Health and Substance Abuse Directives,” also known as the Jennifer Act.

A mental health or substance abuse treatment advance directive is a written document in which the principal provides instructions or preferences or appoints a surrogate to make decisions on behalf of the principal regarding mental health or substance abuse treatment, or both.

The Act emphasizes the need to allow individuals with capacity to control decisions relating to his or her own treatment. The Act recognizes that substance abuse and mental illness cause individuals to fluctuate between capacity and incapacity. An individual in a crisis situation may be unable to provide informed consent in the midst of the crisis to prevent the need for involuntary treatment.

An adult who qualifies for advance directives is an individual who has reached majority or an emancipated minor.

A principal is a competent adult who executes a mental health or substance abuse treatment advance directive and on whose behalf treatment decisions are made.

A directive executed under the terms of the Act is presumed valid. However, an inability to honor one or more of the provisions of the advance directive does not invalidate the remaining provisions. The directive may address an individual’s:

- Preferences and instructions for mental health or substance abuse treatment;
- Refusal to consent to specific types of mental health or substance abuse treatment;
- Consent to admission to and retention in a facility for mental health or substance abuse treatment for up to 14 days, provided that consent is conveyed through an affirmative statement contained in the directive clearly stating whether the consent is revocable by the individual during a mental health or substance abuse crisis;
- Descriptions of situations which may cause the individual to experience a mental health or substance abuse crisis;
- Suggested alternative responses that may supplement or be in lieu of direct mental health or substance abuse treatment, such as treatment approaches from other providers;
- Appointment of a surrogate to make mental health or substance abuse treatment decisions on the individual’s behalf; and
- Nomination of a guardian, limited guardian, or guardian advocate.

The directive may be independent of or combined with a nomination of a guardian or other durable power of attorney.

The bill addresses the execution, effective date, and expiration of a mental health or substance abuse advance directive.

Advance directives must:

- Be in writing;

- Clearly indicate that the individual intends to create a directive;
- Clearly indicate whether the individual intends for the surrogate to have the authority to consent to the individual's voluntary admission to inpatient mental health or substance abuse treatment and whether consent is revocable;
- Be dated and signed by the individual or, if unable to sign, dated and signed at his or her direction;
- Be witnessed by two adults who declare they were present when the individual dated and signed the directive and that the individual did not appear incapacitated or acting under fraud, undue influence, or duress. The surrogate named in the directive cannot witness execution of the directive and at least 1 witness must not be the spouse or blood relative of the individual executing the directive.

The directive is valid upon execution, but all or part may take effect at a later date as designated in the directive. A directive may be revoked in whole or in part or expire under its own terms. But, an individual may revoke an advance directive only if, at the time of execution he or she elected to be able to revoke when incapacitated. A directive that would have otherwise expired but is effective because the individual is incapacitated remains effective until the individual is no longer incapacitated.

An advance directive executed properly in another state is considered valid in this state.

The bill imposes several restrictions on directives. A directive may not create an entitlement to mental health, substance abuse, or medical treatment or supersede a determination of medical necessity. A directive does not obligate a health care provider, professional person, or facility to incur costs associated with requested treatment or to be responsible for the non-treatment or personal care of the individual outside a facility's scope of services. Directives may not replace or supersede wills, testamentary documents, or the provision of intestate succession.

An individual's family, the health care facility, attending physician, or other interested person may seek expedited judicial intervention on a surrogate's decision if a surrogate has acted improperly or abused his or her powers or the individual has sufficient capacity to make his or her own health care decisions.

This bill provides immunity from civil and criminal liability to surrogates, health care facilities, and providers who execute mental health care or substance abuse treatment decisions pursuant to the Jennifer Act, on advance directives. Health care facilities and providers who comply with the Act are also deemed not to have engaged in unprofessional conduct. Immunity from liability applies unless a proponent can show by a preponderance of the evidence that the person or entity did not act in good faith.

Forensic Hospital Diversion Pilot Program (Section 28)

This bill creates the Forensic Hospital Diversion Pilot Program (Program). The purpose of the program is to divert incarcerated defendants who are found mentally incompetent to proceed at trial from state forensic mental health treatment facilities to locked residential treatment facilities, and eventually community outpatient treatment. Goals of treatment are restoration of competency and community reintegration.

Under the bill, the Department of Children and Families (DCF) is required to implement the Program in Alachua, Escambia, Hillsborough, and Miami-Dade counties, in conjunction with the court circuits in those counties. The model for the Program is the Miami-Dade Forensic Alternative Center, which is currently in operation.

In establishing the individual programs, the DCF must consider local needs and available local resources. The bill allows the DCF and the affected judicial circuits to implement these provisions within available resources. Additionally, the Legislature may provide a specific appropriation to support the Program.

Participation in the Program is limited to persons who:

- Are 18 years of age and older;
- Are charged with a second or third degree felony;
- Do not have a significant history of violent criminal offenses;
- Have been adjudicated either incompetent to proceed to trial or not guilty by reason of insanity;
- Meet safety and treatment criteria established by the DCF for placement in the community; and
- Would otherwise be admitted to a state mental health treatment facility.

The bill encourages the Florida Supreme Court, in conjunction with the Task Force on Substance Abuse and Mental Health Issues in the Courts, to develop educational training for judges in the pilot program counties on the community forensic system.

The DCF is authorized to adopt rules to facilitate to facilitate the provisions of the bill relating to the Program. The bill requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2016. The report must examine the efficiency and cost-effectiveness of the program, including its effect on public safety.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 10 of the Florida Constitution.

Although the Forensic Hospital Diversion Pilot Program envisions the availability of local resources as a type of support for the program, the bill does not require local funding.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Fourth Amendment and Due Process

The bill authorizes law enforcement officers to detain in a jail setting a mentally ill person. Detention in jail is approved as a form of protective custody, not because the individual has committed a crime. The bill qualifies that the jail detention is not considered an arrest and that no record of an individual's detention or entry of a crime in the record is permitted.

The Fourth Amendment of the federal constitution prohibits unreasonable search and seizure. Section 12, Article I, of the state constitution embodies the Fourth Amendment and guarantees to all Floridians:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures

Although the term "arrest" does not appear in either constitution, the courts consider an arrest as a seizure of a person for purposes of constitutional analysis.⁴⁹

In *Terry v. Ohio*, the U.S. Supreme Court articulated that "whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person."⁵⁰ The Court recognized that a law enforcement officer can effect two types of detentions. The first, a temporary detention that has come to be known as a "Terry Stop and Frisk" requires a law enforcement officer to have an articulable suspicion of criminal activity. Still, the detention must be temporary and brief.⁵¹

Although a law enforcement officer may purport a stop to be a temporary detention, the U.S. Supreme Court has indicated that at some point a stop becomes a de facto arrest.⁵² In determining whether a stop evolves into a de facto arrest, the Court will consider not just the amount of time the person is detained, but the purpose of the detention as legitimate.⁵³ In this case, the Court approved a 20-minute detention of a suspect during which time the

⁴⁹ Jonathan M. Purver, *Lack of Probable Cause for Warrantless Arrest*, 44 AM. JUR. PROOF OF FACTS 2d 229 (2015).

⁵⁰ *Terry v. Ohio*, 392 So. 2d 1, 16 (1968).

⁵¹ *Id.* at 9 -10.

⁵² *United States v. Sharpe*, 470 U.S. 675, 685-686 (1985).

⁵³ *Id.* at 685-687.

police acted diligently to conclude their investigation of criminal activity, as constituting a temporary detention.⁵⁴

The second type of detention, a warrantless arrest, requires a law enforcement officer to have probable cause that the person has committed a crime. In the absence of probable cause, the U.S. Supreme Court found unconstitutional the actions by a law enforcement officer of transporting a person under the threat of arrest to a police station for the purpose of fingerprinting him.⁵⁵

This bill expressly defines the taking of a mentally ill person into police custody and detaining the person in a jail setting as protective custody, and not as an arrest. Additionally, although the bill requires the officer in charge to notify the nearest appropriate facility within the first 8 hours that the person is detained, the bill does not impose a time limit on the detention. Based on case law, these provisions appear constitutionally suspect. In no circumstance would a court consider the holding of a person in jail for potentially an undefined period of time a temporary detention. Still, even a Terry stop requires some indicia of criminal activity.

Holding mentally ill persons in jail who have not committed a crime leaves them without the whole host of due process protections afforded to persons charged with a crime. These protections include the requirement for law enforcement to issue Miranda warnings, and the rights to arraignment, speedy trial, and appointed counsel during the time that the person remains confined in the jail setting.

Public Providers and Sovereign Immunity

Sovereign immunity originally referred to the English common law concept that the government may not be sued because “the King can do no wrong.” Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents unless the public entity expressly waives immunity.

Article X, s. 13, of the Florida Constitution recognizes sovereign immunity and authorizes the Legislature to provide a waiver of immunity. Section 768.28(1), F.S., provides a broad waiver of sovereign immunity. But by law, liability to pay a claim or judgment is limited to \$200,000 per plaintiff or \$300,000 per incident.⁵⁶

This bill appears to provide absolute immunity to surrogates, health care facilities, and providers who execute in good faith mental health care or substance abuse treatment decisions pursuant to the law on advance directives. Accordingly, this bill creates an exception to the broad waiver of sovereign immunity under s. 768.28, F.S.

⁵⁴ *Id.* at 688.

⁵⁵ *Hayes v. Florida*, 470 U.S. 811, 812, 817-818 (1985).

⁵⁶ Section 768.28(5), F.S.

Private Providers and Access to Courts

The grant of immunity does not specify application to public providers or both public and private providers.

The Florida Supreme Court in *Kluger v. White* reviewed the constitutionality of a statute which abolished the traditional right of action for property vehicle damage in tort from the law unless a narrow exception applied.⁵⁷ In striking down the statute, the court held:

where a right of action to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State...the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people...unless the Legislature can show an overpowering public necessity...and no alternative of meeting such public necessity can be shown.⁵⁸

If this bill abolishes a cause of action that existed before the Declaration of Rights was adopted in 1968 by extending immunity to a private provider or facility, this bill may create an access to courts issue.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Marchman and Baker Act

SB 7070 has an indeterminate fiscal impact on the Department of Children and Families (DCF). The bill could result in more persons having access to substance abuse treatment by including provisions of the Marchman Act in emergency behavioral health care that providers must deliver under the Baker Act. However, some unknown number of persons with substance abuse disorders may already be receiving emergency behavioral health care under the Baker Act. Some costs of those who receive treatment for substance abuse under the bill may already be reflected in the current expenditures for behavioral health care, but the extent is indeterminate.

⁵⁷ *Kluger v. White*, 281 So. 2d 1, 2 (Fla. 1973).

⁵⁸ *Id.* at 4.

The bill expands the use of involuntary outpatient care. The state could experience cost savings for behavioral health care if services are diverted from inpatient settings to outpatient settings under the bill.

The Office of the State Courts Administrator (OSCA) indicates that the fiscal impact of the bill is indeterminate due to the unavailability of data needed to quantifiably establish the bill's impact on court and judicial workload. Merging the provisions of the Marchman and Baker Acts addressing voluntary and involuntary intervention may increase judicial workload. More ex-parte orders, appointments for guardian advocates, involuntary placement hearings, and writ of habeas corpus filings may increase workload. The bill authorizes an individual or his or her representative to request an independent expert examination for involuntary outpatient placement, which may also increase expert witness fees for the judicial branch. The addition of the advance directive language may result in fewer filings of guardianship petitions, which may reduce state courts revenues. However, an increase in revenues could result from an increase in the number of petitions for the determination of incompetency.⁵⁹

Forensic Hospital Diversion Pilot Program

This bill replicates the Miami-Dade Forensic Alternative Center Program as a pilot program in 3 other counties.

The program's current contract with the DCF is \$1.596 million. Funding this model for the four programs will require \$6.38 million. The DCF anticipates that the redirection of \$6.38 million from the department's budget for this program could impact or decrease the provision of services to other clients of the department.⁶⁰

Cost savings may be realized, however, based on the success of the program. The program is able to keep individuals whose competency has been restored in the program rather than in jail while awaiting trial. Doing so may shorten the process, as defendants are less likely to decompensate, or lose competency again from the stress and the less-than-optimal treatment provided in a jail setting. Commitment bed and court cost savings are expected through this bill. Competency is restored more quickly through the program, which requires 103 days on average, than at state facilities, which requires 146 days on average.

In the 2011-12 Fiscal Year, the average cost for a secure forensic bed was \$333 per day. A bed at the program cost much less, at \$229 a day in 2011-12.⁶¹ However, the current cost per bed per day at the program is \$285 a day.⁶²

⁵⁹ Office of the State Courts Administrator, *2015 Judicial Impact Statement* (April 5, 2015).

⁶⁰ Email correspondence from John Bryant, Assistant Secretary for Substance Abuse and Mental Health, DCF (April 2, 2015) (on file with the Senate Judiciary Committee).

⁶¹ Budget Subcommittee on Health and Human Services Appropriations, *supra* note 47.

⁶² Department of Children and Families (DCF), *2015 Agency Legislative Bill Analysis on SB 1452* (March 4 2015) (on file with the Senate Judiciary Committee).

The bill authorizes, rather than requires the pilot projects to be implemented based on available resources including local resources and resources the bill authorizes the DCF to reallocate from specified forensic programs. The extent to which local resources are available in the designated pilot areas and the amount of funding the DCF can reallocate is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 14 of the bill provides, in instances of involuntary inpatient placement for an individual with mental illness or substance abuse impairment, that the Division of Administrative Hearings (DOAH) must inform the individual or his or her guardian, guardian advocate, health care surrogate or proxy, or representative, of the right to an independent expert examination, and, if the individual cannot afford the examination, the court must provide one. Which court is being referenced is unclear, as the case is being handled by the DOAH.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.407, 394.453, 394.455, 394.457, 394.4573, 394.459, 394.4597, 394.4598, 394.4599, 394.4612, 394.4615, 394.462, 394.4625, 394.463, 394.4655, 394.467, 394.4672, 394.875, 394.495, 394.496, 394.499, 394.67, 394.674, 394.9085, 395.0197, 395.1051, 397.311, 397.431, 397.702, 397.94, 402.3057, 409.1757, 409.972, 456.0575, 744.704, 765.101, 765.104, and 790.065.

This bill creates the following sections of the Florida Statutes: 765.4015, 765.402, 765.403, 765.405, 765.406, 765.407, 765.410, 765.411, and 916.185.

This bill transfers and renumbers the following sections of the Florida Statutes: 765.401 and 765.404.

This bill repeals the following sections of the Florida Statutes: 397.601, 397.675, 397.6751, 397.6752, 397.6758, 397.6759, 397.677, 397.6771, 397.6772, 397.6773, 397.6774, 397.6775, 397.679, 397.6791, 397.6793, 397.6795, 397.6797, 397.6798, 397.6799, 397.681, 397.6811, 397.6814, 397.6815, 397.6818, 397.6819, 397.6821, 397.6822, 397.693, 397.695, 397.6951, 397.6955, 397.6957, 397.697, 397.6971, 397.6975, and 397.6977.

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.

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



112268

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment

Delete lines 754 - 769

and insert:

to give such examinations, and a mental health or substance
abuse evaluation, as appropriate, by a psychiatrist,
psychologist, psychiatric nurse, or qualified substance abuse
professional, within 24 hours after arrival at such facility if
the individual has not been released or discharged pursuant to
s. 394.463(2)(h) or s. 394.469. The physical examination and
mental health evaluation must be documented in the clinical



112268

12 record. The physical and mental health examinations shall
13 include efforts to identify indicators of substance abuse
14 impairment, substance abuse intoxication, and substance abuse
15 withdrawal.

16 (d) Shall ~~Every patient in a facility shall~~ be afforded the
17 opportunity to participate in activities designed to enhance
18 self-image and the beneficial effects of other treatments, as
19 determined by the facility.

20 (e) Shall, not more than 5 days after admission to a
21 facility, ~~each patient shall~~ have and receive an individualized
22 treatment plan in



724834

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment

Delete lines 826 - 1007

and insert:

(a) Each individual ~~patient shall receive services,~~
~~including, for a patient placed~~ under s. 394.4655 shall receive,
~~those services that are included in the court order which are~~
~~suites to his or her needs, and which shall be~~ administered
skillfully, safely, and humanely with full respect for the
individual's ~~patient's~~ dignity and personal integrity. Each
individual ~~patient~~ shall receive such medical, vocational,



724834

12 social, educational, substance abuse, and rehabilitative
13 services as his or her condition requires in order to live
14 successfully in the community. In order to achieve this goal,
15 the department shall ~~is directed to~~ coordinate its mental health
16 and substance abuse programs with all other programs of the
17 department and other state agencies.

18 (b) Facilities shall develop and maintain, in a form that
19 is accessible to and readily understandable by individuals held
20 for examination or admitted for mental health or substance abuse
21 treatment patients and consistent with rules adopted by the
22 department, ~~the following~~:

23 1. Criteria, procedures, and required staff training for
24 the any use of close or elevated levels of supervision, ~~of~~
25 restraint, seclusion, or isolation, ~~or of~~ emergency treatment
26 orders, and ~~for the use of~~ bodily control and physical
27 management techniques.

28 2. Procedures for documenting, monitoring, and requiring
29 clinical review of all uses of the procedures described in
30 subparagraph 1. and for documenting and requiring review of any
31 incidents resulting in injury to individuals receiving services
32 patients.

33 3. A system for investigating, tracking, managing, and
34 responding to complaints by individuals ~~persons~~ receiving
35 services or persons ~~individuals~~ acting on their behalf.

36 (c) Facilities shall have written procedures for reporting
37 events that place individuals receiving services at risk of
38 harm. Such events must be reported to the managing entity in the
39 facility's region and the department as soon as reasonably
40 possible after discovery and include, but are not limited to:



724834

41 1. The death, regardless of cause or manner, of an
42 individual examined or treated at a facility that occurs while
43 the individual is at the facility or that occurs within 72 hours
44 after release, if the death is known to the facility
45 administrator.

46 2. An injury sustained, or allegedly sustained, at a
47 facility, by an individual examined or treated at the facility
48 and caused by an accident, self-inflicted injury, assault, act
49 of abuse, neglect, or suicide attempt, if the injury requires
50 medical treatment by a licensed health care practitioner in an
51 acute care medical facility.

52 3. The unauthorized departure or absence of an individual
53 from a facility in which he or she has been held for involuntary
54 examination or involuntary placement.

55 4. A disaster or crisis situation such as a tornado,
56 hurricane, kidnapping, riot, or hostage situation that
57 jeopardizes the health, safety, or welfare of individuals
58 examined or treated in a facility.

59 5. An allegation of sexual battery upon an individual
60 examined or treated in a facility.

61 ~~(d)(e)~~ A facility may not use seclusion or restraint for
62 punishment, to compensate for inadequate staffing, or for the
63 convenience of staff. Facilities shall ensure that all staff are
64 made aware of these restrictions ~~on the use of seclusion and~~
65 ~~restraint and shall make and maintain records that which~~
66 demonstrate that this information has been conveyed to each
67 individual staff member members.

68 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.-

69 (a) Each individual ~~person receiving services~~ in a facility



724834

70 providing mental health services under this part has the right
71 to communicate freely and privately with persons outside the
72 facility unless it is determined that such communication is
73 likely to be harmful to the individual ~~person~~ or others. Each
74 facility shall make available ~~as soon as reasonably possible to~~
75 ~~persons receiving services~~ a telephone that allows for free
76 local calls and access to a long-distance service to the
77 individual as soon as reasonably possible. A facility is not
78 required to pay the costs of the individual's ~~a patient's~~ long-
79 distance calls. The telephone must ~~shall~~ be readily accessible
80 ~~to the patient~~ and ~~shall be~~ placed so that the individual
81 ~~patient~~ may use it to communicate privately and confidentially.
82 The facility may establish reasonable rules for the use of the
83 ~~this~~ telephone which, ~~provided that the rules~~ do not interfere
84 with an individual's ~~a patient's~~ access to a telephone to report
85 abuse pursuant to paragraph (e).

86 (b) Each individual ~~patient~~ admitted to a facility under
87 ~~the provisions of~~ this part shall be allowed to receive, send,
88 and mail sealed, unopened correspondence; and the individual's
89 ~~no patient's~~ incoming or outgoing correspondence may not ~~shall~~
90 be opened, delayed, held, or censored by the facility unless
91 there is reason to believe that it contains items or substances
92 that ~~which~~ may be harmful to the individual ~~patient~~ or others,
93 in which case the administrator may direct reasonable
94 examination of such mail and may regulate the disposition of
95 such items or substances.

96 (c) Each facility shall allow ~~must permit~~ immediate access
97 to an individual ~~any patient~~, subject to the ~~patient's~~ right to
98 deny or withdraw consent at any time, ~~by the~~ individual, or by



724834

99 the individual's ~~patient's~~ family members, guardian, guardian
100 advocate, health care surrogate or proxy, representative,
101 ~~Florida statewide or local advocacy council,~~ or attorneys
102 ~~attorney~~, unless such access would be detrimental to the
103 individual patient. If the ~~a patient's~~ right to communicate or
104 to receive visitors is restricted by the facility, written
105 notice of such restriction and the reasons for the restriction
106 shall be served on the individual and patient, the individual's
107 ~~patient's~~ attorney, and ~~the patient's~~ guardian, guardian
108 advocate, health care surrogate or proxy, or representative; and
109 such restriction, and the reasons for the restriction, must
110 ~~shall~~ be recorded in on the ~~patient's~~ clinical record ~~with the~~
111 ~~reasons therefor~~. The restriction must ~~of a patient's right to~~
112 ~~communicate or to receive visitors shall~~ be reviewed at least
113 every 7 days. The right to communicate or receive visitors may
114 ~~shall~~ not be restricted as a means of punishment. This ~~Nothing~~
115 ~~in this paragraph may not shall~~ be construed to limit the
116 provisions of paragraph (d).

117 (d) Each facility shall establish reasonable rules, which
118 must be the least restrictive possible, governing visitors,
119 visiting hours, and the use of telephones by individuals
120 ~~patients in the least restrictive possible manner~~. An individual
121 has ~~Patients shall have~~ the right to contact and to receive
122 communication from his or her attorney ~~their attorneys~~ at any
123 reasonable time.

124 (e) Each individual patient receiving mental health or
125 substance abuse treatment ~~in any facility~~ shall have ready
126 access to a telephone in order to report ~~an~~ alleged abuse. The
127 facility staff shall orally and in writing inform each



724834

128 individual patient of the procedure for reporting abuse and
129 shall make every reasonable effort to present the information in
130 a language the individual patient understands. A written copy of
131 that procedure, including the telephone number of the central
132 abuse hotline and reporting forms, must ~~shall~~ be posted in plain
133 view.

134 (f) The department shall adopt rules providing a procedure
135 for reporting abuse. ~~Facility staff shall be required,~~ As a
136 condition of employment, facility staff shall ~~to~~ become familiar
137 with the requirements and procedures for ~~the~~ reporting ~~of~~ abuse.

138 (6) CARE AND CUSTODY OF PERSONAL EFFECTS ~~OF PATIENTS.~~ A
139 facility shall respect the rights of an individual ~~A patient's~~
140 ~~right~~ to the possession of his or her clothing and personal
141 effects ~~shall be respected~~. The facility may take temporary
142 custody of such effects if ~~when~~ required for medical and safety
143 reasons. The ~~A patient's~~ clothing and personal effects shall be
144 inventoried upon their removal into temporary custody. Copies of
145 this inventory shall be given to the individual patient and to
146 his or her ~~the patient's~~ guardian, guardian advocate, health
147 care surrogate or proxy, or representative and shall be recorded
148 in the ~~patient's~~ clinical record. This inventory may be amended
149 upon the request of the individual patient or his or her ~~the~~
150 ~~patient's~~ guardian, guardian advocate, health care surrogate or
151 proxy, or representative. The inventory and any amendments ~~to it~~
152 must be witnessed by two members of the facility staff and by
153 the individual patient, if he or she is able. All of the ~~a~~
154 ~~patient's~~ clothing and personal effects held by the facility
155 shall be returned to the individual patient immediately upon his
156 or her ~~the~~ discharge or transfer ~~of the patient~~ from the



724834

157 facility, unless such return would be detrimental to the
158 individual patient. If personal effects are not returned ~~to the~~
159 ~~patient~~, the reason must be documented in the clinical record
160 along with the disposition of the clothing and personal effects,
161 which may be given instead to the individual's patient's
162 guardian, guardian advocate, health care surrogate or proxy, or
163 representative. As soon as practicable after an emergency
164 transfer ~~of a patient~~, the individual's patient's clothing and
165 personal effects shall be transferred to the individual's
166 ~~patient's~~ new location, together with a copy of the inventory
167 and any amendments, unless an alternate plan is approved by the
168 individual patient, if he or she is able, and by his or her the
169 ~~patient's~~ guardian, guardian advocate, health care surrogate or
170 proxy, or representative.

171 (7) VOTING IN PUBLIC ELECTIONS.—A patient who is eligible
172 to vote according to the laws of the state has the right to vote
173 in the primary and general elections. The department shall
174 establish rules to enable patients to obtain voter registration
175 forms, applications for absentee ballots, and absentee ballots.

176 (8) HABEAS CORPUS.—

177 (a) At any time, and without notice, an individual a person
178 held or admitted for mental health or substance abuse
179 examination or placement in a receiving or treatment facility,



699908

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment

Delete line 1275
and insert:
placement patient.



652122

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Between lines 1335 and 1336

insert:

Section 8. Subsection (2) and paragraph (a) of subsection (4) of section 381.0056, Florida Statutes, are amended to read:

381.0056 School health services program.—

(2) As used in this section, the term:

(a) "Emergency health needs" means onsite evaluation, management, and aid for illness or injury pending the student's return to the classroom or release to a parent, guardian,



652122

12 designated friend, law enforcement officer, or designated health
13 care provider.

14 (b) "Entity" or "health care entity" means a unit of local
15 government or a political subdivision of the state; a hospital
16 licensed under chapter 395; a health maintenance organization
17 certified under chapter 641; a health insurer authorized under
18 the Florida Insurance Code; a community health center; a migrant
19 health center; a federally qualified health center; an
20 organization that meets the requirements for nonprofit status
21 under s. 501(c)(3) of the Internal Revenue Code; a private
22 industry or business; or a philanthropic foundation that agrees
23 to participate in a public-private partnership with a county
24 health department, local school district, or school in the
25 delivery of school health services, and agrees to the terms and
26 conditions for the delivery of such services as required by this
27 section and as documented in the local school health services
28 plan.

29 (c) "Invasive screening" means any screening procedure in
30 which the skin or any body orifice is penetrated.

31 (d) "Physical examination" means a thorough evaluation of
32 the health status of an individual.

33 (e) "School health services plan" means the document that
34 describes the services to be provided, the responsibility for
35 provision of the services, the anticipated expenditures to
36 provide the services, and evidence of cooperative planning by
37 local school districts and county health departments.

38 (f) "Screening" means presumptive identification of unknown
39 or unrecognized diseases or defects by the application of tests
40 that can be given with ease and rapidity to apparently healthy



652122

41 persons.

42 (4) (a) Each county health department shall develop, jointly
43 with the district school board and the local school health
44 advisory committee, a school health services plan. ~~and~~ The plan
45 must include, at a minimum, provisions for all of the following:

- 46 1. Health appraisal;
- 47 2. Records review;
- 48 3. Nurse assessment;
- 49 4. Nutrition assessment;
- 50 5. A preventive dental program;
- 51 6. Vision screening;
- 52 7. Hearing screening;
- 53 8. Scoliosis screening;
- 54 9. Growth and development screening;
- 55 10. Health counseling;
- 56 11. Referral and followup of suspected or confirmed health
57 problems by the local county health department;
- 58 12. Meeting emergency health needs in each school;
- 59 13. County health department personnel to assist school
60 personnel in health education curriculum development;
- 61 14. Referral of students to appropriate health treatment,
62 in cooperation with the private health community whenever
63 possible;
- 64 15. Consultation with a student's parent or guardian
65 regarding the need for health attention by the family physician,
66 dentist, or other specialist when definitive diagnosis or
67 treatment is indicated;
- 68 16. Maintenance of records on incidents of health problems,
69 corrective measures taken, and such other information as may be



652122

70 needed to plan and evaluate health programs; except, however,
71 that provisions in the plan for maintenance of health records of
72 individual students must be in accordance with s. 1002.22;

73 17. Health information which will be provided by the school
74 health nurses, when necessary, regarding the placement of
75 students in exceptional student programs and the reevaluation at
76 periodic intervals of students placed in such programs; and

77 18. Notification to the local nonpublic schools of the
78 school health services program and the opportunity for
79 representatives of the local nonpublic schools to participate in
80 the development of the cooperative health services plan.

81 19. Immediate notification to a student's parent, guardian,
82 or caregiver if the student is removed from school, school
83 transportation, or a school-sponsored activity and taken to a
84 receiving facility for an involuntary examination pursuant to s.
85 394.463, including any requirements established under ss.
86 1002.20(3) and 1002.33(9), as applicable.

87
88 ===== T I T L E A M E N D M E N T =====

89 And the title is amended as follows:

90 Delete line 44

91 and insert:

92 advocates; amending s. 381.0056, F.S.; revising the
93 definition of the term "emergency health needs";
94 requiring school health services plans to include
95 notification requirements when a student is removed
96 from school, school transportation, or a school-
97 sponsored activity for involuntary examination;
98 amending s. 394.4599, F.S.; adding health



384000

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1356 - 1404

and insert:

~~registered or certified~~ mail with the date, time, and method of
notice delivery documented in receipts attached to the patient's
clinical record. Hand delivery by a facility employee may be
used as an alternative, with the date and time of delivery
documented in the clinical record. If notice is given by a state
attorney or an attorney for the department, a certificate of
service is ~~shall be~~ sufficient to document service.



384000

12 (b) A receiving facility shall give prompt notice of the
13 whereabouts of an individual ~~a patient~~ who is being
14 involuntarily held for examination to the individual's guardian,
15 guardian advocate, health care surrogate or proxy, attorney or
16 representative, by telephone or in person within 24 hours after
17 the individual's ~~patient's~~ arrival at the facility, ~~unless the~~
18 ~~patient requests that no notification be made.~~ Contact attempts
19 shall be documented in the individual's ~~patient's~~ clinical
20 record and shall begin as soon as reasonably possible after the
21 individual's ~~patient's~~ arrival. ~~Notice that a patient is being~~
22 ~~admitted as an involuntary patient shall be given to the Florida~~
23 ~~local advocacy council no later than the next working day after~~
24 ~~the patient is admitted.~~

25 (c)1. A receiving facility shall give notice of the
26 whereabouts of a minor who is being involuntarily held for
27 examination pursuant to s. 394.463 to the minor's parent,
28 guardian, caregiver, or guardian advocate, in person or by
29 telephone or other form of electronic communication, immediately
30 after the minor's arrival at the facility. The facility may
31 delay notification for no more than 24 hours after the minor's
32 arrival if the facility has submitted a report to the central
33 abuse hotline, pursuant to s. 39.201, based upon knowledge or
34 suspicion of abuse, abandonment, or neglect and if the facility
35 deems a delay in notification to be in the minor's best
36 interest.

37 2. The receiving facility shall attempt to notify the
38 minor's parent, guardian, caregiver, or guardian advocate until
39 the receiving facility receives confirmation from the parent,
40 guardian, caregiver, or guardian advocate, verbally, by



384000

41 telephone or other form of electronic communication, or by
42 recorded message, that notification has been received. Attempts
43 to notify the parent, guardian, caregiver, or guardian advocate
44 must be repeated at least once every hour during the first 12
45 hours after the minor's arrival and once every 24 hours
46 thereafter and must continue until such confirmation is
47 received, unless the minor is released at the end of the 72-hour
48 examination period, or until a petition for involuntary
49 placement is filed with the court pursuant to s. 394.463(2)(i).
50 The receiving facility may seek assistance from a law
51 enforcement agency to notify the minor's parent, guardian,
52 caregiver, or guardian advocate if the facility has not received
53 within the first 24 hours after the minor's arrival a
54 confirmation by the parent, guardian, caregiver, or guardian
55 advocate that notification has been received. The receiving
56 facility must document notification attempts in the minor's
57 clinical record.

58 (d)~~(e)~~ The written notice of the filing of the petition for
59 involuntary placement of an individual being held must contain
60 the following:

61 1. Notice that the petition has been filed with the circuit
62 court in the county in which the individual patient is
63 hospitalized and the address of such court.

64 2. Notice that the office of the public defender has been
65 appointed to represent the individual patient in the proceeding,
66 if the individual patient is not otherwise represented by
67 counsel.

68 3. The date, time, and place of the hearing and the name of
69 each examining expert and every other person expected to testify



384000

70 in support of continued detention.

71 4. Notice that the individual patient, the individual's
72 patient's guardian, guardian advocate, health care surrogate or
73 proxy, or representative, or the administrator may apply for a
74 change of venue for the convenience of the parties or witnesses
75 or because of the condition of the individual patient.

76 5. Notice that the individual patient is entitled to an
77 independent expert examination and, if the individual patient
78 cannot afford such an examination, that the court will provide
79 for one.

80 (e)(d) A treatment facility shall provide notice of an
81 individual's a patient's involuntary admission on the next
82 regular working day after the individual's patient's arrival at
83 the facility.

84 (f)(e) When an individual a patient is to be transferred
85 from one facility to another, notice shall be given by the
86 facility where the individual patient is located before ~~prior to~~
87 the transfer.

88 Section 9. For the purpose of incorporating the amendment
89 made by this act to section 394.4599, Florida Statutes, in
90 references thereto, paragraph (a) of subsection (2) and
91 paragraph (d) of subsection (7) of section 394.4655, Florida
92 Statutes, are reenacted to read:

93 394.4655 Involuntary outpatient placement.—

94 (2) INVOLUNTARY OUTPATIENT PLACEMENT.—

95 (a)1. A patient who is being recommended for involuntary
96 outpatient placement by the administrator of the receiving
97 facility where the patient has been examined may be retained by
98 the facility after adherence to the notice procedures provided



384000

99 in s. 394.4599. The recommendation must be supported by the
100 opinion of a psychiatrist and the second opinion of a clinical
101 psychologist or another psychiatrist, both of whom have
102 personally examined the patient within the preceding 72 hours,
103 that the criteria for involuntary outpatient placement are met.
104 However, in a county having a population of fewer than 50,000,
105 if the administrator certifies that a psychiatrist or clinical
106 psychologist is not available to provide the second opinion, the
107 second opinion may be provided by a licensed physician who has
108 postgraduate training and experience in diagnosis and treatment
109 of mental and nervous disorders or by a psychiatric nurse. Any
110 second opinion authorized in this subparagraph may be conducted
111 through a face-to-face examination, in person or by electronic
112 means. Such recommendation must be entered on an involuntary
113 outpatient placement certificate that authorizes the receiving
114 facility to retain the patient pending completion of a hearing.
115 The certificate shall be made a part of the patient's clinical
116 record.

117 2. If the patient has been stabilized and no longer meets
118 the criteria for involuntary examination pursuant to s.
119 394.463(1), the patient must be released from the receiving
120 facility while awaiting the hearing for involuntary outpatient
121 placement. Before filing a petition for involuntary outpatient
122 treatment, the administrator of a receiving facility or a
123 designated department representative must identify the service
124 provider that will have primary responsibility for service
125 provision under an order for involuntary outpatient placement,
126 unless the person is otherwise participating in outpatient
127 psychiatric treatment and is not in need of public financing for



384000

128 that treatment, in which case the individual, if eligible, may
129 be ordered to involuntary treatment pursuant to the existing
130 psychiatric treatment relationship.

131 3. The service provider shall prepare a written proposed
132 treatment plan in consultation with the patient or the patient's
133 guardian advocate, if appointed, for the court's consideration
134 for inclusion in the involuntary outpatient placement order. The
135 service provider shall also provide a copy of the proposed
136 treatment plan to the patient and the administrator of the
137 receiving facility. The treatment plan must specify the nature
138 and extent of the patient's mental illness, address the
139 reduction of symptoms that necessitate involuntary outpatient
140 placement, and include measurable goals and objectives for the
141 services and treatment that are provided to treat the person's
142 mental illness and assist the person in living and functioning
143 in the community or to prevent a relapse or deterioration.
144 Service providers may select and supervise other individuals to
145 implement specific aspects of the treatment plan. The services
146 in the treatment plan must be deemed clinically appropriate by a
147 physician, clinical psychologist, psychiatric nurse, mental
148 health counselor, marriage and family therapist, or clinical
149 social worker who consults with, or is employed or contracted
150 by, the service provider. The service provider must certify to
151 the court in the proposed treatment plan whether sufficient
152 services for improvement and stabilization are currently
153 available and whether the service provider agrees to provide
154 those services. If the service provider certifies that the
155 services in the proposed treatment plan are not available, the
156 petitioner may not file the petition.



384000

157 (7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT
158 PLACEMENT.—

159 (d) Notice of the hearing shall be provided as set forth in
160 s. 394.4599. The patient and the patient's attorney may agree to
161 a period of continued outpatient placement without a court
162 hearing.

163 Section 10. For the purpose of incorporating the amendment
164 made by this act to section 394.4599, Florida Statutes, in
165 references thereto, subsection (2) and paragraph (b) of
166 subsection (7) of section 394.467, Florida Statutes, are
167 reenacted to read:

168 394.467 Involuntary inpatient placement.—

169 (2) ADMISSION TO A TREATMENT FACILITY.—A patient may be
170 retained by a receiving facility or involuntarily placed in a
171 treatment facility upon the recommendation of the administrator
172 of the receiving facility where the patient has been examined
173 and after adherence to the notice and hearing procedures
174 provided in s. 394.4599. The recommendation must be supported by
175 the opinion of a psychiatrist and the second opinion of a
176 clinical psychologist or another psychiatrist, both of whom have
177 personally examined the patient within the preceding 72 hours,
178 that the criteria for involuntary inpatient placement are met.
179 However, in a county that has a population of fewer than 50,000,
180 if the administrator certifies that a psychiatrist or clinical
181 psychologist is not available to provide the second opinion, the
182 second opinion may be provided by a licensed physician who has
183 postgraduate training and experience in diagnosis and treatment
184 of mental and nervous disorders or by a psychiatric nurse. Any
185 second opinion authorized in this subsection may be conducted



384000

186 through a face-to-face examination, in person or by electronic
187 means. Such recommendation shall be entered on an involuntary
188 inpatient placement certificate that authorizes the receiving
189 facility to retain the patient pending transfer to a treatment
190 facility or completion of a hearing.

191 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
192 PLACEMENT.—

193 (b) If the patient continues to meet the criteria for
194 involuntary inpatient placement, the administrator shall, prior
195 to the expiration of the period during which the treatment
196 facility is authorized to retain the patient, file a petition
197 requesting authorization for continued involuntary inpatient
198 placement. The request shall be accompanied by a statement from
199 the patient's physician or clinical psychologist justifying the
200 request, a brief description of the patient's treatment during
201 the time he or she was involuntarily placed, and an
202 individualized plan of continued treatment. Notice of the
203 hearing shall be provided as set forth in s. 394.4599. If at the
204 hearing the administrative law judge finds that attendance at
205 the hearing is not consistent with the best interests of the
206 patient, the administrative law judge may waive the presence of
207 the patient from all or any portion of the hearing, unless the
208 patient, through counsel, objects to the waiver of presence. The
209 testimony in the hearing must be under oath, and the proceedings
210 must be recorded.

211 Section 11. For the purpose of incorporating the amendment
212 made by this act to section 394.4599, Florida Statutes, in a
213 reference thereto, subsection (1) of section 394.4685, Florida
214 Statutes, is reenacted to read:



384000

215 394.4685 Transfer of patients among facilities.-

216 (1) TRANSFER BETWEEN PUBLIC FACILITIES.-

217 (a) A patient who has been admitted to a public receiving
218 facility, or the family member, guardian, or guardian advocate
219 of such patient, may request the transfer of the patient to
220 another public receiving facility. A patient who has been
221 admitted to a public treatment facility, or the family member,
222 guardian, or guardian advocate of such patient, may request the
223 transfer of the patient to another public treatment facility.
224 Depending on the medical treatment or mental health treatment
225 needs of the patient and the availability of appropriate
226 facility resources, the patient may be transferred at the
227 discretion of the department. If the department approves the
228 transfer of an involuntary patient, notice according to the
229 provisions of s. 394.4599 shall be given prior to the transfer
230 by the transferring facility. The department shall respond to
231 the request for transfer within 2 working days after receipt of
232 the request by the facility administrator.

233 (b) When required by the medical treatment or mental health
234 treatment needs of the patient or the efficient utilization of a
235 public receiving or public treatment facility, a patient may be
236 transferred from one receiving facility to another, or one
237 treatment facility to another, at the department's discretion,
238 or, with the express and informed consent of the patient or the
239 patient's guardian or guardian advocate, to a facility in
240 another state. Notice according to the provisions of s. 394.4599
241 shall be given prior to the transfer by the transferring
242 facility. If prior notice is not possible, notice of the
243 transfer shall be provided as soon as practicable after the



384000

244 transfer.

245 Section 12. For the purpose of incorporating the amendment
246 made by this act to section 394.4599, Florida Statutes, in a
247 reference thereto, subsection (2) of section 394.469, Florida
248 Statutes, is reenacted to read:

249 394.469 Discharge of involuntary patients.—

250 (2) NOTICE.—Notice of discharge or transfer of a patient
251 shall be given as provided in s. 394.4599.

252

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

254 And the title is amended as follows:

255 Delete line 47

256 and insert:

257 admitted to a facility; requiring a receiving facility
258 to give notice immediately of the whereabouts of a
259 minor who is being held involuntarily to the minor's
260 parent, guardian, caregiver, or guardian advocate;
261 providing circumstances when notification may be
262 delayed; requiring the receiving facility to make
263 continuous attempts to notify; authorizing the
264 receiving facility to seek assistance from law
265 enforcement under certain circumstances; requiring the
266 receiving facility to document notification attempts
267 in the minor's clinical record; reenacting ss.
268 394.4655(2)(a) and (7)(d), 394.467(2) and (7)(b),
269 394.4685(1), and 394.469(2), F.S., to incorporate the
270 amendment made to s. 394.4599, F.S., in references
271 thereto; amending s. 394.4615, F.S.;



675926

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1439 - 1461

and insert:

(c) A petition for involuntary inpatient placement is filed and the records are needed by the state attorney to evaluate the allegations set forth in the petition or to prosecute the petition. However, the state attorney may not use clinical records obtained under this part for the purpose of criminal investigation or prosecution, or for any other purpose not authorized by this part.



675926

12 ~~(e)~~ (d) The court orders such release. In determining
13 whether there is good cause for disclosure, the court shall
14 weigh the need for the information to be disclosed against the
15 possible harm of disclosure to the individual ~~person~~ to whom
16 such information pertains.

17 ~~(d)~~ (e) The individual ~~patient~~ is committed to, or is to be
18 returned to, the Department of Corrections ~~from the Department~~
19 ~~of Children and Families,~~ and the Department of Corrections
20 requests such records. These records shall be furnished without
21 charge to the Department of Corrections.

22 (3) Information from the clinical record may be released in
23 the following circumstances:

24 (a) When a patient has declared an intention to harm other
25 persons. When such declaration has been made, the administrator
26 may authorize the release of sufficient information to provide
27 adequate warning to law enforcement agencies and to the person
28 threatened with harm by the

29
30 ===== T I T L E A M E N D M E N T =====

31 And the title is amended as follows:

32 Between lines 49 and 50

33 insert:

34 providing for the release of information from the
35 clinical record to law enforcement agencies under
36 certain circumstances;



817182

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment

Delete lines 1934 - 1963

and insert:

mental health or substance abuse treatment if it is determined
that such treatment is necessary for the safety of the
individual patient or others. ~~The patient may not be released by
the receiving facility or its contractor without the documented
approval of a psychiatrist, a clinical psychologist, or, if the
receiving facility is a hospital, the release may also be
approved by an attending emergency department physician with~~



817182

12 ~~experience in the diagnosis and treatment of mental and nervous~~
13 ~~disorders and after completion of an involuntary examination~~
14 ~~pursuant to this subsection. However, a patient may not be held~~
15 ~~in a receiving facility for involuntary examination longer than~~
16 ~~72 hours.~~

17 (g) An individual may not be held for involuntary
18 examination for more than 72 hours from the time of the
19 individual's arrival at the facility, except that this period
20 may be extended by 48 hours if a physician documents in the
21 clinical record that the individual has ongoing symptoms of
22 substance intoxication or substance withdrawal and the
23 individual would likely experience significant clinical benefit
24 from detoxification services. This determination must be made
25 based on a face-to-face examination conducted by the physician
26 no less than 48 hours and not more than 72 hours after the
27 individual's arrival at the facility. Based on the individual's
28 needs, one of the following actions must be taken within the
29 involuntary examination period:

30 1. The individual shall be released after consultation with
31 the admitting professional and the approval of a psychiatrist,
32 psychiatric nurse, psychologist, or substance abuse
33 professional. However, if the examination is conducted in a
34 hospital, an emergency department physician may approve the
35 release. If the examination is conducted in an addictions
36 receiving facility or detoxification facility, a physician or
37 substance abuse professional may approve release. The



503436

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Between lines 3191 and 3192

insert:

Section 29. Paragraph (1) is added to subsection (3) of section 1002.20, Florida Statutes, to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child’s academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory



503436

12 rights including, but not limited to, the following:

13 (3) HEALTH ISSUES.—

14 (1) Notification of involuntary examinations.—The public
15 school principal or the principal's designee shall immediately
16 notify the parent of a student who is removed from school,
17 school transportation, or a school-sponsored activity and taken
18 to a receiving facility for an involuntary examination pursuant
19 to s. 394.463. The principal or the principal's designee may
20 delay notification for no more than 24 hours after the student
21 is removed from school if the principal or designee deems the
22 delay to be in the student's best interest and if a report has
23 been submitted to the central abuse hotline, pursuant to s.
24 39.201, based upon knowledge or suspicion of abuse, abandonment,
25 or neglect. Each district school board shall develop a policy
26 and procedures for notification under this paragraph.

27 Section 30. Paragraph (q) is added to subsection (9) of
28 section 1002.33, Florida Statutes, to read:

29 1002.33 Charter schools.—

30 (9) CHARTER SCHOOL REQUIREMENTS.—

31 (q) The charter school principal or the principal's
32 designee shall immediately notify the parent of a student who is
33 removed from school, school transportation, or a school-
34 sponsored activity and taken to a receiving facility for an
35 involuntary examination pursuant to s. 394.463. The principal or
36 the principal's designee may delay notification for no more than
37 24 hours after the student is removed from school if the
38 principal or designee deems the delay to be in the student's
39 best interest and if a report has been submitted to the central
40 abuse hotline, pursuant to s. 39.201, based upon knowledge or



503436

41 suspicion of abuse, abandonment, or neglect. Each charter school
42 governing board shall develop a policy and procedures for
43 notification under this paragraph.

44

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

46 And the title is amended as follows:

47 Delete line 161

48 and insert:

49 the Legislature; amending ss. 1002.20 and 1002.33,
50 F.S.; requiring public school and charter school
51 principals or their designees to provide notice of the
52 whereabouts of a student removed from school, school
53 transportation, or a school-sponsored activity for
54 involuntary examination; providing conditions for
55 delay in notification; requiring district school
56 boards and charter school governing boards to develop
57 notification policies and procedures; amending ss.
58 39.407, 394.4612,



285794

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Between lines 3191 and 3192

insert:

Section 29. Section 944.805, Florida Statutes, is created
to read:

944.805 Nonviolent offender reentry program.—

(1) As used in this section, the term:

(a) "Department" means the Department of Corrections.

(b) "Nonviolent offender" means an offender whose primary
offense is a felony of the third degree, who is not the subject



285794

12 of a domestic violence injunction currently in force, and who
13 has never been convicted of:

14 1. A forcible felony as defined in s. 776.08, Florida
15 Statutes;

16 2. An offense specified in s. 775.082(9)(a)1.r., Florida
17 Statutes, regardless of prior incarceration or release;

18 3. An offense described in chapter 847, Florida Statutes;

19 4. An offense under chapter 827, Florida Statutes;

20 5. Any offense specified in s. 784.07, s. 784.074, s.
21 784.075, s. 784.076, s. 784.08, s. 784.083, or s. 784.085,
22 Florida Statutes;

23 6. Any offense involving the possession or use of a
24 firearm;

25 7. A capital felony or a felony of the first or second
26 degree;

27 8. Any offense that requires a person to register as a
28 sexual offender pursuant to s. 943.0435, Florida Statutes.

29 (2)(a) The department shall develop and administer a
30 reentry program for nonviolent offenders. The reentry program
31 must include prison-based substance abuse treatment, general
32 education development and adult basic education courses,
33 vocational training, training in decisionmaking and personal
34 development, and other rehabilitation programs.

35 (b) The reentry program is intended to divert nonviolent
36 offenders from long periods of incarceration when a reduced
37 period of incarceration supplemented by participation in
38 intensive substance abuse treatment and rehabilitative
39 programming could produce the same deterrent effect, protect the
40 public, rehabilitate the offender, and reduce recidivism.



285794

41 (c) The nonviolent offender must serve at least 6 months in
42 the reentry program. The offender may not count any portion of
43 his or her sentence served before placement in the reentry
44 program as progress toward program completion.

45 (d) A reentry program may be operated in a secure area in
46 or adjacent to a correctional institution.

47 (3) The department shall screen offenders committed to the
48 department for eligibility to participate in the reentry program
49 using the criteria in this section. To be eligible, an offender
50 must be a nonviolent offender, must have served at least one-
51 half of his or her original sentence, and must have been
52 identified as needing substance abuse treatment.

53 (4) In addition, the department must consider the following
54 factors when selecting participants for the reentry program:

55 (a) The offender's history of disciplinary reports.

56 (b) The offender's criminal history.

57 (c) The severity of the offender's addiction.

58 (d) The offender's history of criminal behavior related to
59 substance abuse.

60 (e) Whether the offender has participated or requested to
61 participate in any general educational development certificate
62 program or other educational, technical, work, vocational, or
63 self-rehabilitation program.

64 (f) The results of any risk assessment of the offender.

65 (g) The outcome of all past participation of the offender
66 in substance abuse treatment programs.

67 (h) The possible rehabilitative benefits that substance
68 abuse treatment, educational programming, vocational training,
69 and other rehabilitative programming might have on the offender.



285794

70 (i) The likelihood that the offender's participation in the
71 program will produce the same deterrent effect, protect the
72 public, save taxpayer dollars, and prevent or delay recidivism
73 to an equal or greater extent than completion of the sentence
74 previously imposed.

75 (5) (a) If an offender volunteers to participate in the
76 reentry program, meets the eligibility criteria, and is selected
77 by the department based on the considerations in subsection (4)
78 and if space is available in the reentry program, the department
79 may request the sentencing court to approve the offender's
80 participation in the reentry program. The request must be made
81 in writing, must include a brief summation of the department's
82 evaluation under subsection (4), and must identify the documents
83 or other information upon which the evaluation is based. The
84 request and all accompanying documents may be delivered to the
85 sentencing court electronically.

86 (b)1. The department shall notify the state attorney that
87 the offender is being considered for placement in the reentry
88 program. The notice must include a copy of all documents
89 provided with the request to the court. The notice and all
90 accompanying documents may be delivered to the state attorney
91 electronically and may take the form of a copy of an electronic
92 delivery made to the sentencing court.

93 2. The notice must also state that the state attorney may
94 notify the sentencing court in writing of any objection he or
95 she may have to placement of the nonviolent offender in the
96 reentry program. Such notification must be made within 15 days
97 after receipt of the notice by the state attorney from the
98 department. Regardless of whether an objection is raised, the



285794

99 state attorney may provide the sentencing court with any
100 information supplemental or contrary to the information provided
101 by the department which may assist the court in its
102 determination.

103 (c) In determining whether to approve a nonviolent offender
104 for participation in the reentry program, the sentencing court
105 may consider any facts that the court considers relevant,
106 including, but not limited to, the criteria listed in subsection
107 (4); the original sentencing report and any evidence admitted in
108 a previous sentencing proceeding; the offender's record of
109 arrests without conviction for crimes; any other evidence of
110 allegations of unlawful conduct or the use of violence by the
111 offender; the offender's family ties, length of residence in the
112 community, employment history, and mental condition; the
113 likelihood that participation in the program will produce the
114 same deterrent effect, rehabilitate the offender, and prevent or
115 delay recidivism to an equal or greater extent than completion
116 of the sentence previously imposed; and the likelihood that the
117 offender will engage again in criminal conduct.

118 (d) The sentencing court shall notify the department in
119 writing of the court's decision to approve or disapprove the
120 requested placement of the nonviolent offender no later than 30
121 days after the court receives the department's request to place
122 the offender in the reentry program. If the court approves the
123 placement, the notification must list the factors upon which the
124 court relied in making its determination.

125 (6) After the nonviolent offender is admitted to the
126 reentry program, he or she shall undergo a complete substance
127 abuse assessment to determine his or her substance abuse



285794

128 treatment needs. The offender shall also receive an educational
129 assessment, which must be accomplished using the Test of Adult
130 Basic Education or any other testing instrument approved by the
131 Department of Education. Each offender who has not obtained a
132 high school diploma shall be enrolled in an adult education
133 program designed to aid the offender in improving his or her
134 academic skills and earning a high school diploma. Additional
135 assessments of the offender's vocational skills and future
136 career education shall be provided to the offender as needed. A
137 periodic reevaluation shall be made to assess the progress of
138 each offender.

139 (7) (a) If a nonviolent offender in the reentry program
140 becomes unmanageable, the department may revoke the offender's
141 gain-time and place the offender in disciplinary confinement in
142 accordance with department rule. Except as provided in paragraph
143 (b), the offender shall be readmitted to the reentry program
144 after completing the ordered discipline. Any period during which
145 the offender cannot participate in the reentry program must be
146 excluded from the specified time requirements in the reentry
147 program.

148 (b) The department may terminate an offender from the
149 reentry program if:

150 1. The offender commits or threatens to commit a violent
151 act;

152 2. The department determines that the offender cannot
153 participate in the reentry program because of the offender's
154 medical condition;

155 3. The offender's sentence is modified or expires;

156 4. The department reassigns the offender's classification



285794

157 status; or

158 5. The department determines that removing the offender
159 from the reentry program is in the best interest of the offender
160 or the security of the reentry program facility.

161 (8) (a) The department shall submit a report to the
162 sentencing court at least 30 days before the nonviolent offender
163 is scheduled to complete the reentry program. The report must
164 describe the offender's performance in the reentry program and
165 certify whether the performance is satisfactory. The court may
166 schedule a hearing to consider any modification to the imposed
167 sentence. Notwithstanding the eligibility criteria contained in
168 s. 948.20, if the offender's performance is satisfactory to the
169 department and the court, the court shall issue an order
170 modifying the sentence imposed and placing the offender on drug
171 offender probation, as described in s. 948.20(2), subject to the
172 department's certification of the offender's successful
173 completion of the remainder of the reentry program. The term of
174 drug offender probation must not be less than the remaining time
175 the offender would have served in prison had he or she not
176 participated in the program. A condition of drug offender
177 probation may include electronic monitoring or placement in a
178 community residential or nonresidential licensed substance abuse
179 treatment facility under the jurisdiction of the department or
180 the Department of Children and Families or any public or private
181 entity providing such services. The order must include findings
182 that the offender's performance is satisfactory, that the
183 requirements for resentencing under this section are satisfied,
184 and that public safety will not be compromised. If the
185 nonviolent offender violates the conditions of drug offender



285794

186 probation, the court may revoke probation and impose any
187 sentence that it might have originally imposed. An offender may
188 not be released from the custody of the department under this
189 section except pursuant to a judicial order modifying his or her
190 sentence.

191 (b) If an offender released pursuant to paragraph (a)
192 intends to reside in a county that has established a
193 postadjudicatory drug court program as described in s. 397.334,
194 the sentencing court may require the offender to successfully
195 complete the postadjudicatory drug court program as a condition
196 of drug offender probation. The original sentencing court shall
197 relinquish jurisdiction of the offender's case to the
198 postadjudicatory drug court program until the offender is no
199 longer active in the program, the case is returned to the
200 sentencing court due to the offender's termination from the
201 program for failure to comply with the terms of the program, or
202 the offender's sentence is completed. An offender who is
203 transferred to a postadjudicatory drug court program shall
204 comply with all conditions and orders of the program.

205 (9) The department shall implement the reentry program to
206 the fullest extent feasible within available resources.

207 (10) The department may enter into performance-based
208 contracts with qualified individuals, agencies, or corporations
209 for the provision of any or all of the services for the reentry
210 program. However, an offender may not be released from the
211 custody of the department under this section except pursuant to
212 a judicial order modifying a sentence.

213 (11) A nonviolent offender in the reentry program is
214 subject to rules of conduct established by the department and



285794

215 may have sanctions imposed, including loss of privileges,
216 restrictions, disciplinary confinement, alteration of release
217 plans, or other program modifications in keeping with the nature
218 and gravity of the program violation. Administrative or
219 protective confinement, as necessary, may be imposed.

220 (12) This section does not create or confer any right to
221 any offender to placement in the reentry program or any right to
222 placement or early release under supervision of any type. An
223 inmate does not have a cause of action under this section
224 against the department, a court, or the state attorney related
225 to the reentry program.

226 (13) The department may establish a system of incentives
227 within the reentry program which the department may use to
228 promote participation in rehabilitative programs and the orderly
229 operation of institutions and facilities.

230 (14) The department shall develop a system for tracking
231 recidivism, including, but not limited to, rearrests and
232 recommitment of nonviolent offenders who successfully complete
233 the reentry program, and shall report the recidivism rate in the
234 annual report required under this section.

235 (15) The department shall submit an annual report to the
236 Governor, the President of the Senate, and the Speaker of the
237 House of Representatives detailing the extent of implementation
238 of the reentry program and the number of participants who are
239 selected by the department, the number of participants who are
240 approved by the court, and the number of participants who
241 successfully complete the program. The report must include a
242 reasonable estimate or description of the additional public
243 costs incurred and any public funds saved with respect to each



285794

244 participant, a brief description of each sentence modification,
245 and a brief description of the subsequent criminal history, if
246 any, of each participant following any modification of sentence
247 under this section. The report must also include future goals
248 and any recommendations that the department has for future
249 legislative action.

250 (16) The department shall adopt rules as necessary to
251 administer the reentry program.

252 (17) Nothing in this section is severable from the
253 remaining provisions of this section. If any subsection of this
254 section is determined by any state or federal court to be not
255 fully enforceable, this section shall stand repealed in its
256 entirety.

257
258 ===== T I T L E A M E N D M E N T =====

259 And the title is amended as follows:

260 Delete line 161

261 and insert:

262 the Legislature; creating s. 944.805, F.S.; defining
263 the terms "department" and "nonviolent offender";
264 requiring the Department of Corrections to develop and
265 administer a reentry program for nonviolent offenders
266 which is intended to divert nonviolent offenders from
267 long periods of incarceration; requiring that the
268 program include intensive substance abuse treatment
269 and rehabilitative programming; providing for the
270 minimum length of service in the program; providing
271 that any portion of a sentence before placement in the
272 program does not count as progress toward program



285794

273 completion; identifying permissible locations for the
274 operation of a reentry program; specifying eligibility
275 criteria for a nonviolent offender's participation in
276 the reentry program; requiring the department to
277 screen and select eligible offenders for the program
278 based on specified considerations; requiring the
279 department to notify the nonviolent offender's
280 sentencing court to obtain approval before the
281 nonviolent offender is placed in the reentry program;
282 requiring the department to notify the state attorney;
283 authorizing the state attorney to file objections to
284 placing the offender in the reentry program within a
285 specified period; authorizing the sentencing court to
286 consider certain factors when deciding whether to
287 approve an offender for placement in a reentry
288 program; requiring the sentencing court to notify the
289 department of the court's decision to approve or
290 disapprove the requested placement within a specified
291 period; requiring the nonviolent offender to undergo
292 an educational assessment and a complete substance
293 abuse assessment if admitted into the reentry program;
294 requiring the offender to be enrolled in an adult
295 education program in specified circumstances;
296 requiring that assessments of vocational skills and
297 future career education be provided to the offender;
298 requiring that certain reevaluation be made
299 periodically; providing that the nonviolent offender
300 is subject to the disciplinary rules of the
301 department; specifying the reasons for which the



302 offender may be terminated from the reentry program;
303 requiring that the department submit a report to the
304 sentencing court at least 30 days before the
305 nonviolent offender is scheduled to complete the
306 reentry program; specifying the issues to be addressed
307 in the report; authorizing a court to schedule a
308 hearing to consider any modification to an imposed
309 sentence; requiring the sentencing court to issue an
310 order modifying the sentence imposed and placing the
311 nonviolent offender on drug offender probation if the
312 nonviolent offender's performance is satisfactory;
313 authorizing the court to revoke probation and impose
314 the original sentence in specified circumstances;
315 authorizing the court to require the offender to
316 complete a postadjudicatory drug court program in
317 specified circumstances; directing the department to
318 implement the reentry program using available
319 resources; authorizing the department to enter into
320 contracts with qualified individuals, agencies, or
321 corporations for services for the reentry program;
322 requiring offenders to abide by department conduct
323 rules; authorizing the department to impose
324 administrative or protective confinement as necessary;
325 providing that the section does not create a right to
326 placement in the reentry program or any right to
327 placement or early release under supervision of any
328 type; providing that the section does not create a
329 cause of action related to the program; authorizing
330 the department to establish a system of incentives



285794

331 within the reentry program which the department may
332 use to promote participation in rehabilitative
333 programs and the orderly operation of institutions and
334 facilities; requiring the department to develop a
335 system for tracking recidivism, including, but not
336 limited to, rearrests and recommitment of nonviolent
337 offenders who successfully complete the reentry
338 program, and to report on recidivism in an annual
339 report; requiring the department to submit an annual
340 report to the Governor and Legislature detailing the
341 extent of implementation of the reentry program,
342 specifying requirements for the report; requiring the
343 department to adopt rules; providing that specified
344 provisions are not severable; amending ss. 39.407,
345 394.4612,



854860

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 3146 - 3148

and insert:

Diversion Pilot Program in Alachua, Broward, Escambia,
Hillsborough, and Miami-Dade Counties, in conjunction with the
Eighth Judicial Circuit, the Seventeenth Judicial Circuit, the
First Judicial Circuit, the Thirteenth Judicial

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

And the title is amended as follows:



854860

12 Delete line 154
13 and insert:
14 Diversion Pilot Program in five specified judicial

By the Committee on Appropriations

576-02889-15

20157070__

1 A bill to be entitled
 2 An act relating to mental health and substance abuse;
 3 amending s. 394.453, F.S.; adding substance abuse
 4 impairment to a list of disorders for which the
 5 Legislature intends to develop treatment programs;
 6 providing that dignity and human rights are guaranteed
 7 to all individuals who are admitted to substance abuse
 8 facilities; amending s. 394.455, F.S.; defining and
 9 redefining terms; amending s. 394.457, F.S.; adding
 10 substance abuse services as a program focus for which
 11 the Department of Children and Families is
 12 responsible; removing the department's responsibility
 13 for personnel standards; amending s. 394.4573, F.S.;
 14 redefining terms; adding substance abuse care as an
 15 element of the continuity of care management system
 16 that the department must establish; removing duties
 17 and measures of performance of the department
 18 regarding a continuity of care management system;
 19 amending s. 394.459, F.S.; extending a right to
 20 dignity to all individuals held for examination or
 21 admitted for mental health or substance abuse
 22 treatment; providing procedural requirements that must
 23 be followed to detain without consent an individual
 24 who has a mental illness or substance abuse impairment
 25 but who has not been charged with a criminal offense;
 26 providing that individuals held for examination or
 27 admitted for treatment at a facility have a right to
 28 certain evaluation and treatment procedures; removing
 29 provisions regarding express and informed consent for

Page 1 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

30 medical procedures requiring the use of a general
 31 anesthetic or electroconvulsive treatment; requiring
 32 facilities to have written procedures for reporting
 33 events that place individuals receiving services at
 34 risk of harm; requiring service providers to provide
 35 information concerning advance directives to
 36 individuals receiving services; amending s. 394.4597,
 37 F.S.; specifying certain persons who are prohibited
 38 from being selected as an individual's representative;
 39 providing certain rights for an individual's
 40 representative; amending s. 394.4598, F.S.; specifying
 41 certain persons who are prohibited from being
 42 appointed as an individual's guardian advocate;
 43 providing guidelines for decisions of guardian
 44 advocates; amending s. 394.4599, F.S.; adding health
 45 care surrogate or proxy to those individuals who have
 46 responsibilities to act on behalf of an individual
 47 admitted to a facility; amending s. 394.4615, F.S.;
 48 adding a condition under which the clinical record of
 49 an individual must be released to the state attorney;
 50 amending s. 394.462, F.S.; providing that a person in
 51 custody for a felony other than a forcible felony
 52 shall be transported to the nearest receiving facility
 53 for examination; providing that a law enforcement
 54 officer may transport an individual meeting the
 55 criteria for voluntary admission to a mental health
 56 receiving facility, addictions receiving facility, or
 57 detoxification facility at the individual's request;
 58 amending s. 394.4625, F.S.; providing criteria for the

Page 2 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

59 examination and treatment of an individual admitted to
 60 a facility on voluntary status; providing criteria for
 61 the release or discharge of an individual on voluntary
 62 status; providing that an individual on voluntary
 63 status who is released or discharged and is currently
 64 charged with a crime shall be returned to the custody
 65 of a law enforcement officer; providing procedures for
 66 transferring an individual to voluntary status and
 67 transferring an individual to involuntary status;
 68 amending s. 394.463, F.S.; providing for the
 69 involuntary examination of a person for a substance
 70 abuse impairment; providing for the transportation of
 71 an individual for an involuntary examination;
 72 providing that a certificate for an involuntary
 73 examination must contain certain information;
 74 providing criteria and procedures for the release of
 75 an individual held for involuntary examination from
 76 receiving or treatment facilities; amending s.
 77 394.4655, F.S.; adding substance abuse impairment as a
 78 condition to which criteria for involuntary outpatient
 79 placement apply; providing guidelines for an attorney
 80 representing an individual subject to proceedings for
 81 involuntary outpatient placement; providing guidelines
 82 for the state attorney in prosecuting a petition for
 83 involuntary placement; requiring the court to consider
 84 certain information when determining whether to
 85 appoint a guardian advocate for the individual;
 86 requiring the court to inform the individual and his
 87 or her representatives of the individual's right to an

Page 3 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

88 independent expert examination with regard to
 89 proceedings for involuntary outpatient placement;
 90 amending s. 394.467, F.S.; adding substance abuse
 91 impairment as a condition to which criteria for
 92 involuntary inpatient placement apply; adding
 93 addictions receiving facilities and detoxification
 94 facilities as identified receiving facilities;
 95 providing for first and second medical opinions in
 96 proceedings for placement for treatment of substance
 97 abuse impairment; providing guidelines for attorney
 98 representation of an individual subject to proceedings
 99 for involuntary inpatient placement; providing
 100 guidelines for the state attorney in prosecuting a
 101 petition for involuntary placement; setting standards
 102 for the court to accept a waiver of the individual's
 103 rights; requiring the court to consider certain
 104 testimony regarding the individual's prior history in
 105 proceedings; requiring the Division of Administrative
 106 Hearings to inform the individual and his or her
 107 representatives of the right to an independent expert
 108 examination; amending s. 394.4672, F.S.; providing
 109 authority of facilities of the United States
 110 Department of Veterans Affairs to conduct certain
 111 examinations and provide certain treatments; amending
 112 s. 394.875, F.S.; removing a limitation on the amount
 113 of beds in crisis stabilization units; transferring
 114 and renumbering s. 765.401, F.S.; transferring and
 115 renumbering s. 765.404, F.S.; providing a directive to
 116 the Division of Law Revision and Information; creating

Page 4 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

117 s. 765.4015, F.S.; providing a short title; creating
 118 s. 765.402, F.S.; providing legislative findings;
 119 creating s. 765.403, F.S.; defining terms; creating s.
 120 765.405, F.S.; authorizing an adult with capacity to
 121 execute a mental health or substance abuse treatment
 122 advance directive; providing a presumption of validity
 123 if certain requirements are met; specifying provisions
 124 that an advance directive may include; creating s.
 125 765.406, F.S.; providing for execution of the mental
 126 health or substance abuse treatment advance directive;
 127 establishing requirements for a valid mental health or
 128 substance abuse treatment advance directive; providing
 129 that a mental health or substance abuse treatment
 130 advance directive is valid upon execution even if a
 131 part of the advance directive takes effect at a later
 132 date; allowing a mental health or substance abuse
 133 treatment advance directive to be revoked, in whole or
 134 in part, or to expire under its own terms; specifying
 135 that a mental health or substance abuse treatment
 136 advance directive does not or may not serve specified
 137 purposes; creating s. 765.407, F.S.; providing
 138 circumstances under which a mental health or substance
 139 abuse treatment advance directive may be revoked;
 140 providing circumstances under which a principal may
 141 waive specific directive provisions without revoking
 142 the advance directive; creating s. 765.410, F.S.;
 143 prohibiting criminal prosecution of a health care
 144 facility, provider, or surrogate who acts pursuant to
 145 a mental health or substance abuse treatment decision;

Page 5 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

146 creating s. 765.411, F.S.; providing for recognition
 147 of a mental health and substance abuse treatment
 148 advance directive executed in another state if it
 149 complies with the laws of this state; creating s.
 150 916.185, F.S.; providing legislative findings and
 151 intent; defining terms; creating the Forensic Hospital
 152 Diversion Pilot Program; requiring the Department of
 153 Children and Families to implement a Forensic Hospital
 154 Diversion Pilot Program in four specified judicial
 155 circuits; providing eligibility criteria for
 156 participation in the pilot program; providing
 157 legislative intent concerning the training of judges;
 158 authorizing the department to adopt rules; directing
 159 the Office of Program Policy Analysis and Government
 160 Accountability to submit a report to the Governor and
 161 the Legislature; amending ss. 39.407, 394.4612,
 162 394.495, 394.496, 394.499, 394.67, 394.674, 394.9085,
 163 395.0197, 395.1051, 397.311, 397.431, 397.702, 397.94,
 164 402.3057, 409.1757, 409.972, 456.0575, 744.704,
 165 765.101, 765.104 and 790.065, F.S.; conforming cross-
 166 references; repealing ss. 397.601, 397.675, 397.6751,
 167 397.6752, 397.6758, 397.6759, 397.677, 397.6771,
 168 397.6772, 397.6773, 397.6774, 397.6775, 397.679,
 169 397.6791, 397.6793, 397.6795, 397.6797, 397.6798,
 170 397.6799, 397.681, 397.6811, 397.6814, 397.6815,
 171 397.6818, 397.6819, 397.6821, 397.6822, 397.693,
 172 397.695, 397.6951, 397.6955, 397.6957, 397.697,
 173 397.6971, 397.6975, and 397.6977, F.S.; providing an
 174 effective date.

Page 6 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 394.453, Florida Statutes, is amended to read:

394.453 Legislative intent.—It is the intent of the Legislature to authorize and direct the Department of Children and Families to evaluate, research, plan, and recommend to the Governor and the Legislature programs designed to reduce the occurrence, severity, duration, and disabling aspects of mental, emotional, and behavioral disorders, and substance abuse impairment. It is the intent of the Legislature that treatment programs for such disorders shall include, but not be limited to, comprehensive health, social, educational, and rehabilitative services for individuals ~~to persons~~ requiring intensive short-term and continued treatment in order to encourage them to assume responsibility for their treatment and recovery. It is intended that such individuals ~~persons~~ be provided with emergency service and temporary detention for evaluation if when required; that they be admitted to treatment facilities if on a voluntary basis when extended or continuing care is needed and unavailable in the community; that involuntary placement be provided only if when expert evaluation determines that it is necessary; that any involuntary treatment or examination be accomplished in a setting that which is clinically appropriate and most likely to facilitate the individual's person's return to the community as soon as possible; and that ~~individual~~ dignity and human rights be guaranteed to all individuals ~~persons~~ who are admitted to mental

Page 7 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232

health and substance abuse treatment facilities or who are being held under s. 394.463. It is the further intent of the Legislature that the least restrictive means of intervention be employed based on the individual's individual ~~needs of each person~~, within the scope of available services. It is the policy of this state that the use of restraint and seclusion ~~on clients~~ is justified only as an emergency safety measure to be used in response to imminent danger to the individual client or others. It is, therefore, the intent of the Legislature to achieve an ongoing reduction in the use of restraint and seclusion in programs and facilities serving individuals ~~persons~~ with mental illness or who have a substance abuse impairment.

Section 2. Section 394.455, Florida Statutes, is reordered and amended to read:

394.455 Definitions.—As used in this part, unless the context clearly requires otherwise, the term:

(1) "Addictions receiving facility" means a secure, acute care facility that, at a minimum, provides detoxification and stabilization services; is operated 24 hours per day, 7 days per week; and is designated by the department to serve individuals found to be substance abuse impaired as defined in subsection (44) who qualify for services under this section.

~~(2)(1)~~ "Administrator" means the chief administrative officer of a receiving or treatment facility or his or her designee.

(3) "Adult" means an individual who is 18 years of age or older, or who has had the disability of nonage removed pursuant to s. 743.01 or s. 743.015.

(4) "Advanced registered nurse practitioner" means any

Page 8 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

233 person licensed in this state to practice professional nursing
 234 who is certified in advanced or specialized nursing practice
 235 under s. 464.012.

236 ~~(36)(2)~~ "Clinical Psychologist" means a psychologist as
 237 defined in s. 490.003(7) ~~with 3 years of postdoctoral experience~~
 238 ~~in the practice of clinical psychology, inclusive of the~~
 239 ~~experience required for licensure~~, or a psychologist employed by
 240 a facility operated by the United States Department of Veterans
 241 Affairs that qualifies as a receiving or treatment facility
 242 under this part.

243 ~~(5)(3)~~ "Clinical record" means all parts of the record
 244 required to be maintained and includes all medical records,
 245 progress notes, charts, and admission and discharge data, and
 246 all other information recorded by a facility staff which
 247 pertains to an individual's ~~the patient's~~ hospitalization or
 248 treatment.

249 ~~(6)(4)~~ "Clinical social worker" means a person licensed as
 250 a clinical social worker under s. 491.005 or s. 491.006 or a
 251 person employed as a clinical social worker by a facility
 252 operated by the United States Department of Veterans Affairs or
 253 the United States Department of Defense under chapter 491.

254 ~~(7)(5)~~ "Community facility" means ~~a any~~ community service
 255 provider contracting with the department to furnish substance
 256 abuse or mental health services under part IV of this chapter.

257 ~~(8)(6)~~ "Community mental health center or clinic" means a
 258 publicly funded, not-for-profit center ~~that which~~ contracts with
 259 the department for the provision of inpatient, outpatient, day
 260 treatment, or emergency services.

261 ~~(9)(7)~~ "Court," unless otherwise specified, means the

576-02889-15

20157070__

262 circuit court.

263 ~~(10)(8)~~ "Department" means the Department of Children and
 264 Families.

265 ~~(11)~~ "Detoxification facility" means a facility licensed to
 266 provide detoxification services under chapter 397.

267 ~~(12)~~ "Electronic means" means a form of telecommunication
 268 that requires all parties to maintain visual as well as audio
 269 communication.

270 ~~(13)(9)~~ "Express and informed consent" means consent
 271 voluntarily given in writing, by a competent individual person,
 272 after sufficient explanation and disclosure of the subject
 273 matter involved to enable the individual person to make a
 274 knowing and willful decision without any element of force,
 275 fraud, deceit, duress, or other form of constraint or coercion.

276 ~~(14)(10)~~ "Facility" means any hospital, community facility,
 277 public or private facility, or receiving or treatment facility
 278 providing for the evaluation, diagnosis, care, treatment,
 279 training, or hospitalization of individuals persons who appear
 280 to have ~~a mental illness~~ or who have been diagnosed as having a
 281 mental illness or substance abuse impairment. The term
 282 "Facility" does not include ~~a any~~ program or entity licensed
 283 under pursuant to chapter 400 or chapter 429.

284 ~~(15)~~ "Governmental facility" means a facility owned,
 285 operated, or administered by the Department of Corrections or
 286 the United States Department of Veterans Affairs.

287 ~~(16)(11)~~ "Guardian" means the natural guardian of a minor,
 288 or a person appointed by a court to act on behalf of a ward's
 289 person if the ward is a minor or has been adjudicated
 290 incapacitated.

576-02889-15

20157070__

291 ~~(17)(12)~~ "Guardian advocate" means a person appointed by a
 292 court to make decisions regarding mental health or substance
 293 abuse treatment on behalf of an individual ~~a patient~~ who has
 294 been found incompetent to consent to treatment pursuant to this
 295 part. ~~The guardian advocate may be granted specific additional~~
 296 ~~powers by written order of the court, as provided in this part.~~

297 ~~(18)(13)~~ "Hospital" means a hospital facility as defined in
 298 ~~s. 395.002~~ and licensed under chapter 395 and part II of chapter
 299 408.

300 ~~(19)(14)~~ "Incapacitated" means that an individual a person
 301 has been adjudicated incapacitated pursuant to part V of chapter
 302 744 and a guardian of the person has been appointed.

303 ~~(20)(15)~~ "Incompetent to consent to treatment" means that
 304 an individual's a person's judgment is so affected by ~~his or her~~
 305 mental illness, substance abuse impairment, or any medical or
 306 organic cause, that he or she the person lacks the capacity to
 307 make a well-reasoned, willful, and knowing decision concerning
 308 his or her medical, ~~or~~ mental health, or substance abuse
 309 treatment.

310 ~~(21)~~ "Involuntary examination" means an examination
 311 performed under s. 394.463 to determine whether an individual
 312 qualifies for involuntary outpatient placement under s. 394.4655
 313 or involuntary inpatient placement under s. 394.467.

314 ~~(22)~~ "Involuntary placement" means involuntary outpatient
 315 placement pursuant to s. 394.4655 or involuntary inpatient
 316 placement in a receiving or treatment facility pursuant to s.
 317 394.467.

318 ~~(23)(16)~~ "Law enforcement officer" means a law enforcement
 319 officer as defined in s. 943.10.

Page 11 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

320 ~~(24)~~ "Marriage and family therapist" means a person
 321 licensed to practice marriage and family therapy under s.
 322 491.005 or s. 491.006 or a person employed as a marriage and
 323 family therapist by a facility operated by the United States
 324 Department of Veterans Affairs or the United States Department
 325 of Defense.

326 ~~(25)~~ "Mental health counselor" means a person licensed to
 327 practice mental health counseling under s. 491.005 or s. 491.006
 328 or a person employed as a mental health counselor by a facility
 329 operated by the United States Department of Veterans Affairs or
 330 the United States Department of Defense.

331 ~~(26)(17)~~ "Mental health overlay program" means a mobile
 332 service that which provides an independent examination for
 333 voluntary admission admissions and a range of supplemental
 334 onsite services to an individual who has persons with a mental
 335 illness in a residential setting such as a nursing home, or
 336 assisted living facility, adult family-care home, or
 337 nonresidential setting such as an adult day care center.
 338 Independent examinations provided ~~pursuant to this part~~ through
 339 a mental health overlay program must ~~only~~ be provided only under
 340 contract with the department ~~for this service~~ or must be
 341 attached to a public receiving facility that is also a community
 342 mental health center.

343 ~~(28)(18)~~ "Mental illness" means an impairment of the mental
 344 or emotional processes that exercise conscious control of one's
 345 actions or of the ability to perceive or understand reality,
 346 which impairment substantially interferes with the individual's
 347 ~~person's~~ ability to meet the ordinary demands of living. For the
 348 purposes of this part, the term does not include a developmental

Page 12 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

349 disability as defined in chapter 393, intoxication, brain
 350 injury, dementia, or conditions manifested only by antisocial
 351 behavior or substance abuse impairment.

352 (29) "Minor" means an individual who is 17 years of age or
 353 younger and who has not had the disabilities of nonage removed
 354 pursuant to s. 743.01 or s. 743.015.

355 (30)-(19) "Mobile crisis response service" means a
 356 nonresidential crisis service attached to a public receiving
 357 facility and available 24 hours a day, 7 days a week, through
 358 which provides immediate intensive assessments and
 359 interventions, including screening for admission into a mental
 360 health receiving facility, addictions receiving facility, or a
 361 detoxification facility, take place for the purpose of
 362 identifying appropriate treatment services.

363 (20) "Patient" means any person who is held or accepted for
 364 mental health treatment.

365 (31)-(21) "Physician" means a medical practitioner licensed
 366 under chapter 458 or chapter 459 who has experience in the
 367 diagnosis and treatment of mental and nervous disorders or a
 368 physician employed by a facility operated by the United States
 369 Department of Veterans Affairs or the United States Department
 370 of Defense which qualifies as a receiving or treatment facility
 371 under this part.

372 (32) "Physician assistant" means a person licensed under
 373 chapter 458 or chapter 459 who has experience in the diagnosis
 374 and treatment of mental disorders or a person employed as a
 375 physician assistant by a facility operated by the United States
 376 Department of Veterans Affairs or the United States Department
 377 of Defense.

Page 13 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

378 (33)-(22) "Private facility" means any hospital or facility
 379 operated by a for-profit or not-for-profit corporation or
 380 association that provides mental health or substance abuse
 381 services and is not a public facility.

382 (34)-(23) "Psychiatric nurse" means a registered nurse
 383 licensed under part I of chapter 464 who has a master's degree
 384 or a doctorate in psychiatric nursing and 2 years of post-
 385 master's clinical experience under the supervision of a
 386 physician or a person employed as a psychiatric nurse by a
 387 facility operated by the United States Department of Veterans
 388 Affairs or the United States Department of Defense.

389 (35)-(24) "Psychiatrist" means a medical practitioner
 390 licensed under chapter 458 or chapter 459 who has primarily
 391 diagnosed and treated mental and nervous disorders for at least
 392 a period of not less than 3 years, inclusive of psychiatric
 393 residency, or a person employed as a psychiatrist by a facility
 394 operated by the United States Department of Veterans Affairs or
 395 the United States Department of Defense.

396 (37)-(25) "Public facility" means any facility that has
 397 contracted with the department to provide mental health or
 398 substance abuse services to all individuals persons, regardless
 399 of their ability to pay, and is receiving state funds for such
 400 purpose.

401 (27)-(26) "Mental health receiving facility" means any
 402 public or private facility designated by the department to
 403 receive and hold individuals on involuntary status involuntary
 404 patients under emergency conditions or for psychiatric
 405 evaluation and to provide short-term treatment. The term does
 406 not include a county jail.

Page 14 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

407 ~~(38)(27)~~ "Representative" means a person selected pursuant
 408 to s. 394.4597(2) to receive notice of proceedings during the
 409 time a patient is held in or admitted to a receiving or
 410 treatment facility.

411 ~~(39)(28)(a)~~ "Restraint" means a physical device, method, or
 412 drug used to control behavior.

413 (a) A physical restraint is any manual method or physical
 414 or mechanical device, material, or equipment attached or
 415 adjacent to an the individual's body so that he or she cannot
 416 easily remove the restraint and which restricts freedom of
 417 movement or normal access to one's body.

418 (b) A drug used as a restraint is a medication used to
 419 control an individual's ~~the person's~~ behavior or to restrict his
 420 or her freedom of movement and is not part of the standard
 421 treatment regimen for an individual having ~~of a person with~~ a
 422 diagnosed mental illness ~~who is a client of the department~~.
 423 Physically holding an individual ~~a person~~ during a procedure to
 424 forcibly administer psychotropic medication is a physical
 425 restraint.

426 (c) Restraint does not include physical devices, such as
 427 orthopedically prescribed appliances, surgical dressings and
 428 bandages, supportive body bands, or other physical holding ~~when~~
 429 necessary for routine physical examinations and tests; ~~or~~ for
 430 purposes of orthopedic, surgical, or other similar medical
 431 treatment; ~~when used~~ to provide support for the achievement of
 432 functional body position or proper balance; or ~~when used~~ to
 433 protect an individual ~~a person~~ from falling out of bed.

434 (40) "School psychologist" has the same meaning as in s.
 435 490.003.

576-02889-15

20157070__

436 ~~(41)(29)~~ "Seclusion" means the physical segregation ~~of a~~
 437 ~~person in any fashion~~ or involuntary isolation of an individual
 438 ~~a person~~ in a room or area from which the individual person is
 439 prevented from leaving. The prevention may be by physical
 440 barrier or by a staff member who is acting in a manner, or who
 441 is physically situated, so as to prevent the individual person
 442 from leaving the room or area. For purposes of this chapter, the
 443 term does not mean isolation due to an individual's ~~a person's~~
 444 medical condition or symptoms.

445 ~~(42)(30)~~ "Secretary" means the Secretary of Children and
 446 Families.

447 (43) "Service provider" means a mental health receiving
 448 facility, any facility licensed under chapter 397, a treatment
 449 facility, an entity under contract with the department to
 450 provide mental health or substance abuse services, a community
 451 mental health center or clinic, a psychologist, a clinical
 452 social worker, a marriage and family therapist, a mental health
 453 counselor, a physician, a psychiatrist, an advanced registered
 454 nurse practitioner, or a psychiatric nurse.

455 ~~(44)~~ "Substance abuse impairment" means a condition
 456 involving the use of alcoholic beverages or any psychoactive or
 457 mood-altering substance in such a manner as to induce mental,
 458 emotional, or physical problems and cause socially dysfunctional
 459 behavior.

460 ~~(45)~~ "Substance abuse qualified professional" has the same
 461 meaning as in s. 397.311(26).

462 ~~(46)(31)~~ "Transfer evaluation" means the process, as
 463 approved by the ~~appropriate district office of the department,~~
 464 in which an individual ~~whereby a person who is being considered~~

576-02889-15

20157070__

465 ~~for placement in a state treatment facility is first evaluated~~
 466 ~~for appropriateness of admission to a treatment the facility.~~
 467 The transfer evaluation shall be conducted by the department, by
 468 ~~a community-based public receiving facility,~~ or by another
 469 service provider as authorized by the department or by a
 470 community mental health center or clinic if the public receiving
 471 facility is not a community mental health center or clinic.

472 ~~(47)~~(32) "Treatment facility" means a any state-owned,
 473 state-operated, or state-supported hospital, center, or clinic
 474 designated by the department for extended treatment and
 475 hospitalization of individuals who have a mental illness, beyond
 476 that provided ~~for~~ by a receiving facility or a, of persons who
 477 have a mental illness, including facilities of the United States
 478 Government, and any private facility designated by the
 479 department when rendering such services ~~to a person~~ pursuant to
 480 ~~the provisions of this part.~~ Patients treated in facilities of
 481 the United States Government shall be solely those whose care is
 482 the responsibility of the United States Department of Veterans
 483 Affairs.

484 ~~(33)~~ "Service provider" means ~~any public or private~~
 485 ~~receiving facility, an entity under contract with the Department~~
 486 ~~of Children and Families to provide mental health services, a~~
 487 ~~clinical psychologist, a clinical social worker, a marriage and~~
 488 ~~family therapist, a mental health counselor, a physician, a~~
 489 ~~psychiatric nurse as defined in subsection (23), or a community~~
 490 ~~mental health center or clinic as defined in this part.~~

491 ~~(34)~~ "Involuntary examination" means ~~an examination~~
 492 ~~performed under s. 394.463 to determine if an individual~~
 493 ~~qualifies for involuntary inpatient treatment under s.~~

Page 17 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

494 ~~394.467(1) or involuntary outpatient treatment under s.~~
 495 ~~394.4655(1).~~

496 ~~(35) "Involuntary placement" means either involuntary~~
 497 ~~outpatient treatment pursuant to s. 394.4655 or involuntary~~
 498 ~~inpatient treatment pursuant to s. 394.467.~~

499 ~~(36) "Marriage and family therapist" means a person~~
 500 ~~licensed as a marriage and family therapist under chapter 491.~~

501 ~~(37) "Mental health counselor" means a person licensed as a~~
 502 ~~mental health counselor under chapter 491.~~

503 ~~(38) "Electronic means" means a form of telecommunication~~
 504 ~~that requires all parties to maintain visual as well as audio~~
 505 ~~communication.~~

506 Section 3. Section 394.457, Florida Statutes, is amended to
 507 read:

508 394.457 Operation and administration.—

509 (1) ADMINISTRATION.—The Department of Children and Families
 510 is designated the "Mental Health Authority" of Florida. The
 511 department and the Agency for Health Care Administration shall
 512 exercise executive and administrative supervision over all
 513 ~~mental health~~ facilities, programs, and services.

514 (2) RESPONSIBILITIES OF THE DEPARTMENT.—The department is
 515 responsible for:

516 (a) The planning, evaluation, and implementation of a
 517 complete and comprehensive statewide program of mental health
 518 and substance abuse, including community services, receiving and
 519 treatment facilities, child services, research, and training as
 520 authorized and approved by the Legislature, based on the annual
 521 program budget of the department. The department is also
 522 responsible for the coordination of efforts with other

Page 18 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

523 departments and divisions of the state government, county and
 524 municipal governments, and private agencies concerned with and
 525 providing mental health and substance abuse services. It is
 526 responsible for establishing standards, providing technical
 527 assistance, and ~~supervising exercising supervision of~~ mental
 528 health and substance abuse programs of, and the treatment of
 529 individuals ~~patients~~ at, community facilities, other facilities
 530 servng individuals for persons who have a mental illness or
 531 substance abuse impairment, and any agency or facility providing
 532 services under ~~to patients pursuant to~~ this part.

533 (b) The publication and distribution of an information
 534 handbook to facilitate understanding of this part, the policies
 535 and procedures involved in the implementation of this part, and
 536 the responsibilities of the various providers of services under
 537 this part. It shall stimulate research by public and private
 538 agencies, institutions of higher learning, and hospitals in the
 539 interest of the elimination and amelioration of mental illness.

540 (3) POWER TO CONTRACT.—The department may contract to
 541 provide, and be provided with, services and facilities in order
 542 to carry out its responsibilities under this part with the
 543 following agencies: public and private hospitals; receiving and
 544 treatment facilities; clinics; laboratories; departments,
 545 divisions, and other units of state government; the state
 546 colleges and universities; the community colleges; private
 547 colleges and universities; counties, municipalities, and any
 548 other governmental unit, including facilities of the United
 549 States Government; and any other public or private entity which
 550 provides or needs facilities or services. Baker Act funds for
 551 community inpatient, crisis stabilization, short-term

Page 19 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

552 residential treatment, and screening services must be allocated
 553 to each county pursuant to the department's funding allocation
 554 methodology. Notwithstanding s. 287.057(3)(e), contracts for
 555 community-based Baker Act services for inpatient, crisis
 556 stabilization, short-term residential treatment, and screening
 557 provided under this part, other than those with other units of
 558 government, to be provided for the department must be awarded
 559 using competitive sealed bids if the county commission of the
 560 county receiving the services makes a request to the
 561 department's district office by January 15 of the contracting
 562 year. The district may not enter into a competitively bid
 563 contract under this provision if such action will result in
 564 increases of state or local expenditures for Baker Act services
 565 within the district. Contracts for these Baker Act services
 566 using competitive sealed bids are effective for 3 years. The
 567 department shall adopt rules establishing minimum standards for
 568 such contracted services and facilities and shall make periodic
 569 audits and inspections to assure that the contracted services
 570 are provided and meet the standards of the department.

571 (4) APPLICATION FOR AND ACCEPTANCE OF GIFTS AND GRANTS.—The
 572 department may apply for and accept any funds, grants, gifts, or
 573 services made available to it by any agency or department of the
 574 Federal Government or any other public or private agency or
 575 person individual in aid of mental health and substance abuse
 576 programs. All such moneys must ~~shall~~ be deposited in the State
 577 Treasury and ~~shall be~~ disbursed as provided by law.

578 (5) RULES.—The department shall adopt rules:

579 (a) Establishing ~~The department shall adopt rules~~
 580 ~~establishing~~ forms and procedures relating to the rights and

Page 20 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__

581 privileges of individuals being examined or treated at patients
 582 ~~seeking mental health treatment from~~ facilities under this part.

583 (b) ~~The department shall adopt rules~~ Necessary for the
 584 implementation and administration of ~~the provisions of this~~
 585 ~~part, and~~ A program subject to ~~the provisions of this part~~ may
 586 ~~shall not be permitted to~~ operate unless rules designed to
 587 ensure the protection of the health, safety, and welfare of the
 588 individuals examined and patients treated under through such
 589 program have been adopted. Such rules ~~adopted under this~~
 590 ~~subsection~~ must include provisions governing the use of
 591 restraint and seclusion which are consistent with recognized
 592 best practices and professional judgment; prohibit inherently
 593 dangerous restraint or seclusion procedures; establish
 594 limitations on the use and duration of restraint and seclusion;
 595 establish measures to ensure the safety of program participants
 596 and staff during an incident of restraint or seclusion;
 597 establish procedures for staff to follow before, during, and
 598 after incidents of restraint or seclusion; establish
 599 professional qualifications ~~of~~ and training for staff who may
 600 order or be engaged in the use of restraint or seclusion; and
 601 establish mandatory reporting, data collection, and data
 602 dissemination procedures and requirements. Such rules ~~adopted~~
 603 ~~under this subsection~~ must require that each instance of the use
 604 of restraint or seclusion be documented in the clinical record
 605 of the individual who has been restrained or secluded patient.

606 (c) Establishing ~~The department shall adopt rules~~
 607 ~~establishing~~ minimum standards for services provided by a mental
 608 health overlay program or a mobile crisis response service.

609 ~~(6) PERSONNEL.~~

576-02889-15 20157070__

610 ~~(a) The department shall, by rule, establish minimum~~
 611 ~~standards of education and experience for professional and~~
 612 ~~technical personnel employed in mental health programs,~~
 613 ~~including members of a mobile crisis response service.~~

614 ~~(b) The department shall design and distribute appropriate~~
 615 ~~materials for the orientation and training of persons actively~~
 616 ~~engaged in implementing the provisions of this part relating to~~
 617 ~~the involuntary examination and placement of persons who are~~
 618 ~~believed to have a mental illness.~~

619 ~~(6)(7) PAYMENT FOR CARE OF PATIENTS.~~ Fees and fee
 620 collections for patients in state-owned, state-operated, or
 621 state-supported treatment facilities shall be according to s.
 622 402.33.

623 Section 4. Section 394.4573, Florida Statutes, is amended
 624 to read:
 625 394.4573 Continuity of care management system; measures of
 626 performance; reports.—

627 (1) For the purposes of this section, the term:
 628 (a) "Case management" means those activities aimed at
 629 assessing client needs, planning services, linking the service
 630 system ~~to a client~~, coordinating the various system components,
 631 monitoring service delivery, and evaluating the effect of
 632 service delivery.

633 (b) "Case manager" means a person ~~an individual~~ who works
 634 with clients, and their families and significant others, to
 635 provide case management.

636 (c) "Client manager" means an employee of the department
 637 who is assigned to specific provider agencies and geographic
 638 areas to ensure that the full range of needed services is

576-02889-15

20157070__

639 available to clients.

640 ~~(d) "Continuity of care management system" means a system~~
 641 ~~that assures, within available resources, that clients have~~
 642 ~~access to the full array of services within the mental health~~
 643 ~~services delivery system.~~

644 (2) The department shall ensure the establishment of ~~is~~
 645 ~~directed to implement~~ a continuity of care management system for
 646 the provision of mental health and substance abuse care in
 647 keeping with s. 394.9082, ~~through the provision of client and~~
 648 ~~case management, including clients referred from state treatment~~
 649 ~~facilities to community mental health facilities. Such system~~
 650 ~~shall include a network of client managers and case managers~~
 651 ~~throughout the state designed to:~~

652 ~~(a) Reduce the possibility of a client's admission or~~
 653 ~~readmission to a state treatment facility.~~

654 ~~(b) Provide for the creation or designation of an agency in~~
 655 ~~each county to provide single intake services for each person~~
 656 ~~seeking mental health services. Such agency shall provide~~
 657 ~~information and referral services necessary to ensure that~~
 658 ~~clients receive the most appropriate and least restrictive form~~
 659 ~~of care, based on the individual needs of the person seeking~~
 660 ~~treatment. Such agency shall have a single telephone number,~~
 661 ~~operating 24 hours per day, 7 days per week, where practicable,~~
 662 ~~at a central location, where each client will have a central~~
 663 ~~record.~~

664 ~~(c) Advocate on behalf of the client to ensure that all~~
 665 ~~appropriate services are afforded to the client in a timely and~~
 666 ~~dignified manner.~~

667 ~~(d) Require that any public receiving facility initiating a~~

Page 23 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

668 ~~patient transfer to a licensed hospital for acute care mental~~
 669 ~~health services not accessible through the public receiving~~
 670 ~~facility shall notify the hospital of such transfer and send all~~
 671 ~~records relating to the emergency psychiatric or medical~~
 672 ~~condition.~~

673 ~~(3) The department is directed to develop and include in~~
 674 ~~contracts with service providers measures of performance with~~
 675 ~~regard to goals and objectives as specified in the state plan.~~
 676 ~~Such measures shall use, to the extent practical, existing data~~
 677 ~~collection methods and reports and shall not require, as a~~
 678 ~~result of this subsection, additional reports on the part of~~
 679 ~~service providers. The department shall plan monitoring visits~~
 680 ~~of community mental health facilities with other state, federal,~~
 681 ~~and local governmental and private agencies charged with~~
 682 ~~monitoring such facilities.~~

683 Section 5. Subsections (1) through (6) and (8) of section
 684 394.459, Florida Statutes, are amended, present subsection (12)
 685 of that section is redesignated as subsection (13), and a new
 686 subsection (12) is added to that section, to read:

687 394.459 Rights of individuals receiving treatment and
 688 services patients.-

689 (1) RIGHT TO ~~INDIVIDUAL~~ DIGNITY.-It is the policy of this
 690 state that the ~~individual~~ dignity of all individuals held for
 691 examination or admitted for mental health or substance abuse
 692 treatment ~~the patient shall~~ be respected at all times and upon
 693 all occasions, including ~~any occasion~~ when the individual
 694 patient is taken into custody, held, or transported. Procedures,
 695 facilities, vehicles, and restraining devices used ~~utilized~~ for
 696 criminals or those accused of a crime ~~may~~ shall not be used in

Page 24 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__

697 connection with individuals ~~persons~~ who have a mental illness or
 698 substance abuse impairment, except for the protection of that
 699 individual ~~the patient~~ or others. An individual ~~Persons~~ who has
 700 ~~have~~ a mental illness or substance abuse impairment but who has
 701 ~~are~~ not been charged with a criminal offense may be detained
 702 without his or her consent, subject to the limitations specified
 703 in paragraph (b). If it has been determined that a hospital, an
 704 addictions receiving facility, or a licensed detoxification
 705 facility is the most appropriate placement for the individual,
 706 the detaining officer shall: ~~shall not be detained or~~
 707 ~~incarcerated in the jails of this state.~~

(a) Without using unreasonable force, take the individual,
 708 if necessary, against his or her will, to a hospital or a
 709 licensed detoxification or addictions receiving facility.

(b) In the case of an adult, detain the individual for his
 710 or her own protection in a municipal or county jail or other
 711 appropriate detention facility. Such detention may not be
 712 considered an arrest for any purpose, and an entry or other
 713 record may not be made to indicate that the individual has been
 714 detained or charged with any crime. The officer in charge of the
 715 detention facility must notify the nearest appropriate facility
 716 within the first 8 hours after detention that the individual has
 717 been detained. It is the duty of the detention facility to
 718 arrange, as necessary, for transportation of the individual to
 719 the appropriate facility.

The detaining officer shall notify the nearest relative of a
 723 minor who has been taken into protective custody and shall
 724 notify the nearest relative of an adult who is in such custody,
 725

576-02889-15 20157070__

726 unless the adult requests that notification not be given. An
 727 individual ~~A person~~ who is receiving treatment for mental
 728 illness or substance abuse ~~may shall~~ not be deprived of his or
 729 her ~~any~~ constitutional rights. However, if such individual ~~a~~
 730 ~~person~~ is adjudicated incapacitated, his or her rights may be
 731 limited to the same extent that the rights of any incapacitated
 732 person are limited by law.

(2) RIGHT TO TREATMENT.—An individual held for examination
 733 or admitted for mental illness or substance abuse treatment:
 734

(a) May ~~A person shall~~ not be denied treatment for mental
 735 illness or substance abuse impairment, and services may shall
 736 not be delayed at a mental health receiving facility, addictions
 737 receiving facility, detoxification facility, or treatment
 738 facility because of inability to pay. However, every reasonable
 739 effort to collect appropriate reimbursement for the cost of
 740 providing mental health or substance abuse services from
 741 individuals to persons able to pay for services, including
 742 insurance or ~~third-party~~ payments by third-party payers, shall
 743 be made by facilities providing services under pursuant to this
 744 part.
 745

(b) Shall be provided ~~It is further the policy of the state~~
 746 ~~that~~ the least restrictive appropriate available treatment,
 747 which must be utilized based on the individual's individual
 748 needs and best interests of the patient and consistent with the
 749 optimum improvement of the individual's patient's condition.
 750

(c) Shall ~~Each person who remains at a receiving or~~
 751 ~~treatment facility for more than 12 hours shall~~ be given a
 752 physical examination by a health practitioner authorized by law
 753 to give such examinations, and a mental health evaluation by a
 754

576-02889-15

20157070__

754 psychiatrist, psychologist, or psychiatric nurse, within 24
 755 hours after arrival at such facility if the individual has not
 756 been released or discharged pursuant to s. 394.463(2)(h) or s.
 757 394.469. The physical examination and mental health evaluation
 758 must be documented in the clinical record. The physical and
 759 mental health examinations shall include efforts to identify
 760 indicators of substance abuse impairment, substance abuse
 761 intoxication, and substance abuse withdrawal.

762
 763 (d) ~~Shall~~ Every patient in a facility shall be afforded the
 764 opportunity to participate in activities designed to enhance
 765 self-image and the beneficial effects of other treatments, as
 766 determined by the facility.

767 (e) Shall, within 24 hours of admission to a facility, Not
 768 more than 5 days after admission to a facility, each patient
 769 shall have and receive an individualized treatment plan in
 770 writing, which the individual patient has had an opportunity to
 771 assist in preparing and to review before prior to its
 772 implementation. The plan must shall include a space for the
 773 individual's patient's comments and signature.

774 (3) RIGHT TO EXPRESS AND INFORMED ~~PATIENT~~ CONSENT.—

775 ~~(a)(a)1-~~ Each individual patient entering treatment shall
 776 be asked to give express and informed consent for admission or
 777 treatment.

778 1. If the individual patient has been adjudicated
 779 incapacitated or found to be incompetent to consent to
 780 treatment, express and informed consent ~~must to treatment shall~~
 781 be sought from his or her instead from the patient's guardian,
 782 or guardian advocate, or health care surrogate or proxy. If the
 783 individual patient is a minor, express and informed consent for

Page 27 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

784 admission or treatment must be obtained shall also be requested
 785 from the patient's guardian. Express and informed consent for
 786 admission or treatment of a patient under 18 years of age shall
 787 be required from the minor's patient's guardian, unless the
 788 minor is seeking outpatient crisis intervention services under
 789 s. 394.4784. Express and informed consent for admission or
 790 treatment given by a patient who is under 18 years of age shall
 791 not be a condition of admission when the patient's guardian
 792 gives express and informed consent for the patient's admission
 793 pursuant to s. 394.463 or s. 394.467.

794 2. Before giving express and informed consent, the
 795 following information shall be provided and explained in plain
 796 language to the individual and patient, or to his or her the
 797 patient's guardian if the individual patient is an adult 18
 798 years of age or older and has been adjudicated incapacitated, or
 799 to his or her the patient's guardian advocate if the individual
 800 patient has been found to be incompetent to consent to
 801 treatment, to the health care surrogate or proxy, or to both the
 802 individual patient and the guardian if the individual patient is
 803 a minor: the reason for admission or treatment; the proposed
 804 treatment and , the purpose of such the treatment to be
 805 provided; the common risks, benefits, and side effects of the
 806 proposed treatment thereof; the specific dosage range of for the
 807 medication, if when applicable; alternative treatment
 808 modalities; the approximate length of care; the potential
 809 effects of stopping treatment; how treatment will be monitored;
 810 and that any consent given for treatment may be revoked orally
 811 or in writing before or during the treatment period by the
 812 individual receiving the treatment patient or by a person who is

Page 28 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

813 legally authorized to make health care decisions on the
814 individual's behalf ~~of the patient.~~

815 ~~(b) In the case of medical procedures requiring the use of~~
816 ~~a general anesthetic or electroconvulsive treatment, and prior~~
817 ~~to performing the procedure, express and informed consent shall~~
818 ~~be obtained from the patient if the patient is legally~~
819 ~~competent, from the guardian of a minor patient, from the~~
820 ~~guardian of a patient who has been adjudicated incapacitated, or~~
821 ~~from the guardian advocate of the patient if the guardian~~
822 ~~advocate has been given express court authority to consent to~~
823 ~~medical procedures or electroconvulsive treatment as provided~~
824 ~~under s. 394.4598.~~

825 (4) QUALITY OF TREATMENT.-

826 (a) Each individual held for examination, admitted for
827 mental health or substance abuse treatment, or receiving
828 involuntary outpatient treatment patient shall receive services,
829 including, for a patient placed under s. 394.4655 shall receive,
830 those services that are included in the court order which are
831 suited to his or her needs, and which shall be administered
832 skillfully, safely, and humanely with full respect for the
833 individual's patient's dignity and personal integrity. Each
834 individual patient shall receive such medical, vocational,
835 social, educational, substance abuse, and rehabilitative
836 services as his or her condition requires in order to live
837 successfully in the community. In order to achieve this goal,
838 the department shall ~~is directed to~~ coordinate its mental health
839 and substance abuse programs with all other programs of the
840 department and other state agencies.

841 (b) Facilities shall develop and maintain, in a form that

576-02889-15

20157070__

842 is accessible to and readily understandable by individuals held
843 for examination or admitted for mental health or substance abuse
844 treatment patients and consistent with rules adopted by the
845 department, ~~the following:~~

846 1. Criteria, procedures, and required staff training for
847 the any use of close or elevated levels of supervision, ~~of~~
848 restraint, seclusion, or isolation, ~~or of~~ emergency treatment
849 orders, and ~~for the use of~~ bodily control and physical
850 management techniques.

851 2. Procedures for documenting, monitoring, and requiring
852 clinical review of all uses of the procedures described in
853 subparagraph 1. and for documenting and requiring review of any
854 incidents resulting in injury to individuals receiving services
855 patients.

856 3. A system for investigating, tracking, managing, and
857 responding to complaints by individuals persons receiving
858 services or persons individuals acting on their behalf.

859 (c) Facilities shall have written procedures for reporting
860 events that place individuals receiving services at risk of
861 harm. Such events must be reported to the managing entity in the
862 facility's region and the department as soon as reasonably
863 possible after discovery and include, but are not limited to:

864 1. The death, regardless of cause or manner, of an
865 individual examined or treated at a facility that occurs while
866 the individual is at the facility or that occurs within 72 hours
867 after release, if the death is known to the facility
868 administrator.

869 2. An injury sustained, or allegedly sustained, at a
870 facility, by an individual examined or treated at the facility

576-02889-15

20157070__

871 and caused by an accident, self-inflicted injury, assault, act
 872 of abuse, neglect, or suicide attempt, if the injury requires
 873 medical treatment by a licensed health care practitioner in an
 874 acute care medical facility.

875 3. The unauthorized departure or absence of an individual
 876 from a facility in which he or she has been held for involuntary
 877 examination or involuntary placement.

878 4. A disaster or crisis situation such as a tornado,
 879 hurricane, kidnapping, riot, or hostage situation that
 880 jeopardizes the health, safety, or welfare of individuals
 881 examined or treated in a facility.

882 5. An allegation of sexual battery upon an individual
 883 examined or treated in a facility.

884 (d)(e) A facility may not use seclusion or restraint for
 885 punishment, to compensate for inadequate staffing, or for the
 886 convenience of staff. Facilities shall ensure that all staff are
 887 made aware of these restrictions ~~on the use of seclusion and~~
 888 ~~restraint and shall make and~~ maintain records that which
 889 demonstrate that this information has been conveyed to each
 890 ~~individual staff member members.~~

891 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

892 (a) Each individual held for examination or admitted for
 893 mental health or substance abuse treatment person receiving
 894 ~~services~~ in a facility providing mental health services under
 895 this part has the right to communicate freely and privately with
 896 persons outside the facility unless it is determined that such
 897 communication is likely to be harmful to the individual person
 898 or others. Each facility shall make available ~~as soon as~~
 899 ~~reasonably possible to persons receiving services~~ a telephone

576-02889-15

20157070__

900 that allows for free local calls and access to a long-distance
 901 service to the individual as soon as reasonably possible. A
 902 facility is not required to pay the costs of the individual's a
 903 ~~patient's~~ long-distance calls. The telephone ~~must shall~~ be
 904 readily accessible ~~to the patient~~ and ~~shall be~~ placed so that
 905 the individual patient may use it to communicate privately and
 906 confidentially. The facility may establish reasonable rules for
 907 the use of ~~the this~~ telephone ~~which, provided that the rules do~~
 908 not interfere with an individual's a patient's access to a
 909 telephone to report abuse pursuant to paragraph (e).

910 (b) Each individual patient admitted to a facility under
 911 ~~the provisions of this part~~ shall be allowed to receive, send,
 912 and mail sealed, unopened correspondence; and the individual's
 913 ~~no patient's~~ incoming or outgoing correspondence ~~may not shall~~
 914 be opened, delayed, held, or censored by the facility unless
 915 there is reason to believe that it contains items or substances
 916 that which may be harmful to the individual patient or others,
 917 in which case the administrator may direct reasonable
 918 examination of such mail and may regulate the disposition of
 919 such items or substances.

920 (c) Each facility ~~shall allow must permit~~ immediate access
 921 to an individual held for examination or admitted for mental
 922 health or substance abuse treatment any patient, subject to the
 923 ~~patient's~~ right to deny or withdraw consent at any time, ~~by the~~
 924 individual, or by the individual's patient's family members,
 925 guardian, guardian advocate, health care surrogate or proxy,
 926 representative, ~~Florida statewide or local advocacy council,~~ or
 927 attorneys attorney, unless such access would be detrimental to
 928 the individual patient. If ~~the a patient's~~ right to communicate

576-02889-15

20157070__

929 or to receive visitors is restricted by the facility, written
 930 notice of such restriction and the reasons for the restriction
 931 shall be served on the individual and patient, the individual's
 932 patient's attorney, and the patient's guardian, guardian
 933 advocate, health care surrogate or proxy, or representative; and
 934 such restriction, and the reasons for the restriction, must
 935 shall be recorded in on the patient's clinical record with the
 936 reasons therefor. The restriction must of a patient's right to
 937 communicate or to receive visitors shall be reviewed at least
 938 every 7 days. The right to communicate or receive visitors may
 939 shall not be restricted as a means of punishment. This Nothing
 940 in this paragraph may not shall be construed to limit the
 941 provisions of paragraph (d).

942 (d) Each facility shall establish reasonable rules, which
 943 must be the least restrictive possible, governing visitors,
 944 visiting hours, and the use of telephones by individuals held
 945 for examination or admitted for mental health or substance abuse
 946 treatment patients in the least restrictive possible manner. An
 947 individual has Patients shall have the right to contact and to
 948 receive communication from his or her attorney their attorneys
 949 at any reasonable time.

950 (e) Each individual held for examination or admitted for
 951 patient receiving mental health or substance abuse treatment in
 952 any facility shall have ready access to a telephone in order to
 953 report ~~an~~ alleged abuse. The facility staff shall orally and in
 954 writing inform each individual patient of the procedure for
 955 reporting abuse and shall make every reasonable effort to
 956 present the information in a language the individual patient
 957 understands. A written copy of that procedure, including the

Page 33 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

958 telephone number of the central abuse hotline and reporting
 959 forms, must shall be posted in plain view.

960 (f) The department shall adopt rules providing a procedure
 961 for reporting abuse. ~~Facility staff shall be required,~~ As a
 962 condition of employment, facility staff shall to become familiar
 963 with the requirements and procedures for ~~the reporting of~~ abuse.

964 (6) CARE AND CUSTODY OF PERSONAL EFFECTS OF ~~PATIENTS.~~ A
 965 facility shall respect the rights of an individual held for
 966 examination or admitted for mental health or substance abuse
 967 treatment A patient's right to the possession of his or her
 968 clothing and personal effects shall be respected. The facility
 969 may take temporary custody of such effects if when required for
 970 medical and safety reasons. The A patient's clothing and
 971 personal effects shall be inventoried upon their removal into
 972 temporary custody. Copies of this inventory shall be given to
 973 the individual patient and to his or her the patient's guardian,
 974 guardian advocate, health care surrogate or proxy, or
 975 representative and shall be recorded in the patient's clinical
 976 record. This inventory may be amended upon the request of the
 977 individual patient or his or her the patient's guardian,
 978 guardian advocate, health care surrogate or proxy, or
 979 representative. The inventory and any amendments ~~to it~~ must be
 980 witnessed by two members of the facility staff and by the
 981 individual patient, if he or she is able. All of ~~the a patient's~~
 982 clothing and personal effects held by the facility shall be
 983 returned to the individual patient immediately upon his or her
 984 ~~the discharge or transfer of the patient~~ from the facility,
 985 unless such return would be detrimental to the individual
 986 patient. If personal effects are not returned ~~to the patient~~,

Page 34 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__
 987 the reason must be documented in the clinical record along with
 988 the disposition of the clothing and personal effects, which may
 989 be given instead to the individual's patient's guardian,
 990 guardian advocate, health care surrogate or proxy, or
 991 representative. As soon as practicable after an emergency
 992 transfer ~~of a patient~~, the individual's ~~patient's~~ clothing and
 993 personal effects shall be transferred to the individual's
 994 ~~patient's~~ new location, together with a copy of the inventory
 995 and any amendments, unless an alternate plan is approved by the
 996 individual patient, if he or she is able, and by his or her the
 997 ~~patient's~~ guardian, guardian advocate, health care surrogate or
 998 proxy, or representative.

999 (7) VOTING IN PUBLIC ELECTIONS.—A patient who is eligible
 1000 to vote according to the laws of the state has the right to vote
 1001 in the primary and general elections. The department shall
 1002 establish rules to enable patients to obtain voter registration
 1003 forms, applications for absentee ballots, and absentee ballots.

1004 (8) HABEAS CORPUS.—

1005 (a) At any time, and without notice, an individual ~~a person~~
 1006 held or admitted for mental health or substance abuse
 1007 examination or placement in a ~~receiving or treatment~~ facility,
 1008 or a relative, friend, guardian, guardian advocate, health care
 1009 surrogate or proxy, representative, or attorney, or the
 1010 department, on behalf of such individual person, may petition
 1011 for a writ of habeas corpus to question the cause and legality
 1012 of such detention and request that the court order a return to
 1013 the writ in accordance with chapter 79. Each individual patient
 1014 held in a facility shall receive a written notice of the right
 1015 to petition for a writ of habeas corpus.

576-02889-15 20157070__
 1016 (b) At any time, and without notice, an individual held or
 1017 admitted for mental health or substance abuse examination or
 1018 placement ~~a person who is a patient~~ in a ~~receiving or treatment~~
 1019 facility, or a relative, friend, guardian, guardian advocate,
 1020 health care surrogate or proxy, representative, or attorney, or
 1021 the department, on behalf of such individual person, may file a
 1022 petition in the circuit court in the county where the individual
 1023 ~~patient~~ is being held alleging that he or she ~~the patient~~ is
 1024 being unjustly denied a right or privilege granted under this
 1025 part herein or that a procedure authorized under this part
 1026 ~~herein~~ is being abused. Upon the filing of such a petition, the
 1027 court may ~~shall have the authority to~~ conduct a judicial inquiry
 1028 and ~~to~~ issue an ~~any~~ order needed to correct an abuse of ~~the~~
 1029 ~~provisions of~~ this part.

1030 (c) The administrator of any ~~receiving or treatment~~
 1031 facility receiving a petition under this subsection shall file
 1032 the petition with the clerk of the court on the next court
 1033 working day.

1034 (d) A ~~No~~ fee may not ~~shall~~ be charged for ~~the~~ filing ~~of~~ a
 1035 petition under this subsection.

1036 (9) VIOLATIONS.—The department shall report to the Agency
 1037 for Health Care Administration any violation of the rights or
 1038 privileges of patients, or of any procedures provided under this
 1039 part, by any facility or professional licensed or regulated by
 1040 the agency. The agency is authorized to impose any sanction
 1041 authorized for violation of this part, based solely on the
 1042 investigation and findings of the department.

1043 (10) LIABILITY FOR VIOLATIONS.—Any person who violates or
 1044 abuses any rights or privileges of patients provided by this

576-02889-15 20157070__

1045 part is liable for damages as determined by law. Any person who
 1046 acts in good faith in compliance with the provisions of this
 1047 part is immune from civil or criminal liability for his or her
 1048 actions in connection with the admission, diagnosis, treatment,
 1049 or discharge of a patient to or from a facility. However, this
 1050 section does not relieve any person from liability if such
 1051 person commits negligence.

1052 (11) RIGHT TO PARTICIPATE IN TREATMENT AND DISCHARGE
 1053 PLANNING.—The patient shall have the opportunity to participate
 1054 in treatment and discharge planning and shall be notified in
 1055 writing of his or her right, upon discharge from the facility,
 1056 to seek treatment from the professional or agency of the
 1057 patient's choice.

1058 (12) ADVANCE DIRECTIVES.—All service providers under this
 1059 part shall provide information concerning advance directives to
 1060 individuals and assist those who are competent and willing to
 1061 complete an advance directive. The directive may include
 1062 instructions regarding mental health or substance abuse care.
 1063 Service providers under this part shall honor the advance
 1064 directive of individuals they serve, or shall request the
 1065 transfer of the individual as required under s. 765.1105.

1066 Section 6. Section 394.4597, Florida Statutes, is amended
 1067 to read:

1068 394.4597 Persons to be notified; appointment of a patient's
 1069 representative.—

1070 (1) VOLUNTARY ADMISSION PATIENTS.—At the time an individual
 1071 a patient is voluntarily admitted to a receiving or treatment
 1072 facility, the individual shall be asked to identify a person to
 1073 be notified in case of an emergency, and the identity and

576-02889-15 20157070__

1074 contact information of that a person ~~to be notified in case of~~
 1075 ~~an emergency~~ shall be entered in the individual's patient's
 1076 ~~clinical~~ record.

1077 (2) INVOLUNTARY ADMISSION PATIENTS.—

1078 (a) At the time an individual a patient is admitted to a
 1079 facility for involuntary examination or placement, or when a
 1080 petition for involuntary placement is filed, the names,
 1081 addresses, and telephone numbers of the individual's patient's
 1082 guardian or guardian advocate, health care surrogate, or proxy,
 1083 or representative if he or she the patient has no guardian, and
 1084 the individual's patient's attorney shall be entered in the
 1085 ~~patient's clinical~~ record.

1086 (b) If the individual patient has no guardian, guardian
 1087 advocate, health care surrogate, or proxy, he or she the patient
 1088 shall be asked to designate a representative. If the individual
 1089 patient is unable or unwilling to designate a representative,
 1090 the facility shall select a representative.

1091 (c) The individual patient shall be consulted with regard
 1092 to the selection of a representative by the receiving or
 1093 treatment facility and may shall have authority to request that
 1094 the any such representative be replaced.

1095 (d) If when the receiving or treatment facility selects a
 1096 representative, first preference shall be given to a health care
 1097 surrogate, if one has been previously selected by the patient.
 1098 If the individual patient has not previously selected a health
 1099 care surrogate, the selection, except for good cause documented
 1100 in the individual's patient's clinical record, shall be made
 1101 from the following list in the order of listing:

1102 1. The individual's patient's spouse.

576-02889-15

20157070__

- 1103 2. An adult child of the individual patient.
- 1104 3. A parent of the individual patient.
- 1105 4. The adult next of kin of the individual patient.
- 1106 5. An adult friend of the individual patient.
- 1107 ~~6. The appropriate Florida local advocacy council as~~
- 1108 ~~provided in s. 402.166.~~
- 1109 (e) The following persons are prohibited from selection as
- 1110 an individual's representative:
- 1111 1. A professional providing clinical services to the
- 1112 individual under this part;
- 1113 2. The licensed professional who initiated the involuntary
- 1114 examination of the individual, if the examination was initiated
- 1115 by professional certificate;
- 1116 3. An employee, administrator, or board member of the
- 1117 facility providing the examination of the individual;
- 1118 4. An employee, administrator, or board member of a
- 1119 treatment facility providing treatment of the individual;
- 1120 5. A person providing any substantial professional services
- 1121 to the individual, including clinical and nonclinical services;
- 1122 6. A creditor of the individual;
- 1123 7. A person subject to an injunction for protection against
- 1124 domestic violence under s. 741.30, whether the order of
- 1125 injunction is temporary or final, and for which the individual
- 1126 was the petitioner; and
- 1127 8. A person subject to an injunction for protection against
- 1128 repeat violence, sexual violence, or dating violence under s.
- 1129 784.046, whether the order of injunction is temporary or final,
- 1130 and for which the individual was the petitioner.
- 1131 ~~(e) A licensed professional providing services to the~~

Page 39 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

- 1132 ~~patient under this part, an employee of a facility providing~~
- 1133 ~~direct services to the patient under this part, a department~~
- 1134 ~~employee, a person providing other substantial services to the~~
- 1135 ~~patient in a professional or business capacity, or a creditor of~~
- 1136 ~~the patient shall not be appointed as the patient's~~
- 1137 ~~representative.~~
- 1138 (f) The representative selected by the individual or
- 1139 designated by the facility has the right to:
- 1140 1. Receive notice of the individual's admission;
- 1141 2. Receive notice of proceedings affecting the individual;
- 1142 3. Have immediate access to the individual unless such
- 1143 access is documented to be detrimental to the individual;
- 1144 4. Receive notice of any restriction of the individual's
- 1145 right to communicate or receive visitors;
- 1146 5. Receive a copy of the inventory of personal effects upon
- 1147 the individual's admission and to request an amendment to the
- 1148 inventory at any time;
- 1149 6. Receive disposition of the individual's clothing and
- 1150 personal effects if not returned to the individual, or to
- 1151 approve an alternate plan;
- 1152 7. Petition on behalf of the individual for a writ of
- 1153 habeas corpus to question the cause and legality of the
- 1154 individual's detention or to allege that the individual is being
- 1155 unjustly denied a right or privilege granted under this part, or
- 1156 that a procedure authorized under this part is being abused;
- 1157 8. Apply for a change of venue for the individual's
- 1158 involuntary placement hearing for the convenience of the parties
- 1159 or witnesses or because of the individual's condition;
- 1160 9. Receive written notice of any restriction of the

Page 40 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1161 individual's right to inspect his or her clinical record;
 1162 10. Receive notice of the release of the individual from a
 1163 receiving facility where an involuntary examination was
 1164 performed;
 1165 11. Receive a copy of any petition for the individual's
 1166 involuntary placement filed with the court; and
 1167 12. Be informed by the court of the individual's right to
 1168 an independent expert evaluation pursuant to involuntary
 1169 placement procedures.

1170 Section 7. Section 394.4598, Florida Statutes, is amended
 1171 to read:

1172 394.4598 Guardian advocate.—

1173 (1) The administrator may petition the court for the
 1174 appointment of a guardian advocate based upon the opinion of a
 1175 psychiatrist that an individual held for examination or admitted
 1176 for mental health or substance abuse treatment ~~the patient~~ is
 1177 incompetent to consent to treatment. If the court finds that the
 1178 individual a patient is incompetent to consent to treatment and
 1179 has not been adjudicated incapacitated and a guardian having
 1180 with the authority to consent to mental health or substance
 1181 abuse treatment has not been appointed, it shall appoint a
 1182 guardian advocate. The individual patient has the right to have
 1183 an attorney represent him or her at the hearing. If the
 1184 individual person is indigent, the court shall appoint the
 1185 office of the public defender to represent him or her at the
 1186 hearing. The individual patient has the right to testify, cross-
 1187 examine witnesses, and present witnesses. The proceeding must
 1188 shall be recorded ~~either~~ electronically or stenographically, and
 1189 testimony shall be ~~provided~~ under oath. One of the professionals

Page 41 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1190 authorized to give an opinion in support of a petition for
 1191 involuntary placement, as described in s. 394.4655 or s.
 1192 394.467, shall must testify. The A guardian advocate shall must
 1193 meet the qualifications of a guardian pursuant to contained in
 1194 part IV of chapter 744, ~~except that a professional referred to~~
 1195 ~~in this part, an employee of the facility providing direct~~
 1196 ~~services to the patient under this part, a departmental~~
 1197 ~~employee, a facility administrator, or member of the Florida~~
 1198 ~~local advocacy council shall not be appointed. A person who is~~
 1199 ~~appointed as a guardian advocate must agree to the appointment.~~
 1200 A person may not be appointed as a guardian advocate unless he
 1201 or she agrees to the appointment.

1202 (2) The following persons are prohibited from being
 1203 appointed as an individual's guardian advocate:

1204 (a) A professional providing clinical services to the
 1205 individual under this part;

1206 (b) The licensed professional who initiated the involuntary
 1207 examination of the individual, if the examination was initiated
 1208 by professional certificate;

1209 (c) An employee, administrator, or board member of the
 1210 facility providing the examination of the individual;

1211 (d) An employee, administrator, or board member of a
 1212 treatment facility providing treatment of the individual;

1213 (e) A person providing any substantial professional
 1214 services to the individual, including clinical and nonclinical
 1215 services;

1216 (f) A creditor of the individual;

1217 (g) A person subject to an injunction for protection
 1218 against domestic violence under s. 741.30, whether the order of

Page 42 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1219 injunction is temporary or final, and for which the individual
 1220 was the petitioner; and

1221 (h) A person subject to an injunction for protection
 1222 against repeat violence, sexual violence, or dating violence
 1223 under s. 784.046, whether the order of injunction is temporary
 1224 or final, and for which the individual was the petitioner.

1225 (3)(2) A facility requesting appointment of a guardian
 1226 advocate must, prior to the appointment, provide the prospective
 1227 guardian advocate with information about the duties and
 1228 responsibilities of guardian advocates, including the
 1229 information about the ethics of medical decisionmaking. Before
 1230 asking a guardian advocate to give consent to treatment for an
 1231 individual held for examination or admitted for mental health or
 1232 substance abuse treatment a patient, the facility shall provide
 1233 to the guardian advocate sufficient information to allow so that
 1234 the guardian advocate to ~~can~~ decide whether to give express and
 1235 informed consent to the treatment, including information that
 1236 the treatment is essential to the care of the individual
 1237 patient, and that the treatment does not present an unreasonable
 1238 risk of serious, hazardous, or irreversible side effects. Before
 1239 giving consent to treatment, the guardian advocate must meet and
 1240 talk with the individual patient and the individual's patient's
 1241 physician face to face in person, if at all possible, and by
 1242 telephone, if not. The guardian advocate shall make every effort
 1243 to make decisions regarding treatment that he or she believes
 1244 the individual would have made under the circumstances if the
 1245 individual were capable of making such a decision. The decision
 1246 of the guardian advocate may be reviewed by the court, upon
 1247 petition of the individual's patient's attorney, the

Page 43 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1248 individual's patient's family, or the facility administrator.

1249 (4)(3) Prior to A guardian advocate must attend at least a
 1250 4-hour training course approved by the court before exercising
 1251 his or her authority, the guardian advocate shall attend a
 1252 training course approved by the court. This training course, of
 1253 not less than 4 hours, must include, at minimum, information
 1254 about an the individual's patient rights, psychotropic
 1255 medications, diagnosis of mental illness or substance abuse
 1256 impairment, the ethics of medical decisionmaking, and the duties
 1257 of guardian advocates. This training course shall take the place
 1258 of the training required for guardians appointed pursuant to
 1259 chapter 744.

1260 (5)(4) The information to be supplied to prospective
 1261 guardian advocates before prior to their appointment and the
 1262 training course for guardian advocates must be developed and
 1263 completed through a course developed by the department and
 1264 approved by the chief judge of the circuit court and taught by a
 1265 court-approved organization. Court-approved organizations may
 1266 include, but need are not be limited to, community or junior
 1267 colleges, guardianship organizations, and the local bar
 1268 association or The Florida Bar. The court may, in its
 1269 discretion, waive some or all of the training requirements for
 1270 guardian advocates or impose additional requirements. The court
 1271 shall make its decision on a case-by-case basis and, in making
 1272 its decision, shall consider the experience and education of the
 1273 guardian advocate, the duties assigned to the guardian advocate,
 1274 and the needs of the individual subject to involuntary
 1275 examination or placement patient.

1276 (6)(5) In selecting a guardian advocate, the court shall

Page 44 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1277 give preference to a health care surrogate, if one has already
 1278 been designated by the individual held for examination or
 1279 admitted for mental health or substance abuse treatment patient.
 1280 If the individual patient has not previously selected a health
 1281 care surrogate, except for good cause documented in the court
 1282 record, the selection shall be made from the following list in
 1283 the order of listing:

- 1284 (a) The individual's patient's spouse.
- 1285 (b) An adult child of the individual patient.
- 1286 (c) A parent of the individual patient.
- 1287 (d) The adult next of kin of the individual patient.
- 1288 (e) An adult friend of the individual patient.
- 1289 (f) An adult trained and willing to serve as guardian
 1290 advocate for the individual patient.

1291 (7)(6) If a guardian with the authority to consent to
 1292 medical treatment has not already been appointed or if the
 1293 individual held for examination or admitted for mental health or
 1294 substance abuse treatment patient has not already designated a
 1295 health care surrogate, the court may authorize the guardian
 1296 advocate to consent to medical treatment, as well as mental
 1297 health and substance abuse treatment. Unless otherwise limited
 1298 by the court, a guardian advocate with authority to consent to
 1299 medical treatment shall have the same authority to make health
 1300 care decisions and be subject to the same restrictions as a
 1301 proxy appointed under part IV of chapter 765. Unless the
 1302 guardian advocate has sought and received express court approval
 1303 in proceeding separate from the proceeding to determine the
 1304 competence of the patient to consent to medical treatment, the
 1305 guardian advocate may not consent to:

Page 45 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

- 1306 (a) Abortion.
- 1307 (b) Sterilization.
- 1308 (c) Electroconvulsive treatment.
- 1309 (d) Psychosurgery.
- 1310 (e) Experimental treatments that have not been approved by
 1311 a federally approved institutional review board in accordance
 1312 with 45 C.F.R. part 46 or 21 C.F.R. part 56.

1313
 1314 In making a medical treatment decision under this subsection,
 1315 the court shall ~~must~~ base its decision on evidence that the
 1316 treatment or procedure is essential to the care of the
 1317 individual patient and that the treatment does not present an
 1318 unreasonable risk of serious, hazardous, or irreversible side
 1319 effects. The court shall follow the procedures set forth in
 1320 subsection (1) of this section.

1321 (8)(7) The guardian advocate shall be discharged when the
 1322 individual for whom he or she is appointed patient is discharged
 1323 from an order for involuntary outpatient ~~placement~~ or
 1324 involuntary inpatient placement or when the individual patient
 1325 is transferred from involuntary to voluntary status. The court
 1326 ~~or a hearing officer~~ shall consider the competence of the
 1327 individual patient pursuant to subsection (1) and may consider
 1328 an involuntarily placed individual's patient's competence to
 1329 consent to treatment at any hearing. Upon sufficient evidence,
 1330 the court may restore, or the magistrate or administrative law
 1331 judge hearing officer may recommend that the court restore, the
 1332 individual's patient's competence. A copy of the order restoring
 1333 competence or the certificate of discharge containing the
 1334 restoration of competence shall be provided to the individual

Page 46 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1335 ~~patient~~ and the guardian advocate.

1336 Section 8. Section 394.4599, Florida Statutes, is amended
1337 to read:

1338 394.4599 Notice.—

1339 (1) VOLUNTARY ADMISSION PATIENTS.—Notice of an individual's
1340 a voluntary ~~patient's~~ admission shall ~~only~~ be given only at the
1341 request of the individual patient, except that, in an emergency,
1342 notice shall be given as determined by the facility.

1343 (2) INVOLUNTARY ADMISSION PATIENTS.—

1344 (a) Whenever notice is required to be given under this
1345 part, such notice shall be given to the individual patient and
1346 the individual's patient's guardian, guardian advocate, health
1347 care surrogate or proxy, attorney, and representative.

1348 1. When notice is required to be given to an individual a
1349 patient, it shall be given both orally and in writing, in the
1350 language and terminology that the individual patient can
1351 understand, and, if needed, the facility shall provide an
1352 interpreter for the individual patient.

1353 2. Notice to an individual's a patient's guardian, guardian
1354 advocate, health care surrogate or proxy, attorney, and
1355 representative shall be given by ~~United States mail and by~~
1356 ~~registered or certified~~ mail with the receipts attached to the
1357 ~~patient's~~ clinical record. Hand delivery by a facility employee
1358 may be used as an alternative, with delivery documented in the
1359 clinical record. If notice is given by a state attorney or an
1360 attorney for the department, a certificate of service is shall
1361 ~~be~~ sufficient to document service.

1362 (b) A receiving facility shall give prompt notice of the
1363 whereabouts of an individual a patient who is being

Page 47 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1364 involuntarily held for examination to the individual's guardian,
1365 guardian advocate, health care surrogate or proxy, attorney or
1366 representative, by telephone or in person within 24 hours after
1367 the individual's patient's arrival at the facility, ~~unless the~~
1368 ~~patient requests that no notification be made~~. Contact attempts
1369 shall be documented in the individual's patient's clinical
1370 record and shall begin as soon as reasonably possible after the
1371 individual's patient's arrival. ~~Notice that a patient is being~~
1372 ~~admitted as an involuntary patient shall be given to the Florida~~
1373 ~~local advocacy council no later than the next working day after~~
1374 ~~the patient is admitted~~.

1375 (c) The written notice of the filing of the petition for
1376 involuntary placement of an individual being held must contain
1377 the following:

1378 1. Notice that the petition has been filed with the circuit
1379 court in the county in which the individual patient is
1380 hospitalized and the address of such court.

1381 2. Notice that the office of the public defender has been
1382 appointed to represent the individual patient in the proceeding,
1383 if the individual patient is not otherwise represented by
1384 counsel.

1385 3. The date, time, and place of the hearing and the name of
1386 each examining expert and every other person expected to testify
1387 in support of continued detention.

1388 4. Notice that the individual patient, the individual's
1389 patient's guardian, guardian advocate, health care surrogate or
1390 proxy, or representative, or the administrator may apply for a
1391 change of venue for the convenience of the parties or witnesses
1392 or because of the condition of the individual patient.

Page 48 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1393 5. Notice that the individual patient is entitled to an
 1394 independent expert examination and, if the individual patient
 1395 cannot afford such an examination, that the court will provide
 1396 for one.

1397 (d) A treatment facility shall provide notice of an
 1398 individual's a patient's involuntary admission on the next
 1399 regular working day after the individual's patient's arrival at
 1400 the facility.

1401 (e) When an individual a patient is to be transferred from
 1402 one facility to another, notice shall be given by the facility
 1403 where the individual patient is located before ~~prior to~~ the
 1404 transfer.

1405 Section 9. Subsections (1), (2), (3), and (10) of section
 1406 394.4615, Florida Statutes, are amended to read:

1407 394.4615 Clinical records; confidentiality.-

1408 (1) A clinical record shall be maintained for each
 1409 individual held for examination or admitted for treatment under
 1410 this part patient. The record shall include data pertaining to
 1411 admission and such other information as may be required under
 1412 rules of the department. A clinical record is confidential and
 1413 exempt from ~~the provisions of~~ s. 119.07(1). Unless waived by
 1414 express and informed consent of the individual, by the patient
 1415 or his or her the patient's guardian, ~~or~~ guardian advocate,
 1416 health care surrogate or proxy, or, if the individual patient is
 1417 deceased, by his or her guardian, guardian advocate, health care
 1418 surrogate or proxy, by his or her the patient's personal
 1419 representative or the family member who stands next in line of
 1420 intestate succession, the confidential status of the clinical
 1421 record shall not be lost by either authorized or unauthorized

Page 49 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1422 disclosure to any person, organization, or agency.

1423 (2) The clinical record of an individual held for
 1424 examination or admitted for treatment under this part shall be
 1425 released if when:

1426 (a) The individual patient or the individual's patient's
 1427 guardian, guardian advocate, health care surrogate or proxy, or
 1428 representative authorizes the release. The guardian, ~~or~~ guardian
 1429 advocate, health care surrogate or proxy shall be provided
 1430 access to the appropriate clinical records ~~of the patient~~. The
 1431 individual patient or the patient's guardian, ~~or~~ guardian
 1432 advocate, health care surrogate or proxy may authorize the
 1433 release of information and clinical records to appropriate
 1434 persons to ensure the continuity of the individual's patient's
 1435 health care or mental health or substance abuse care.

1436 (b) The individual patient is represented by counsel and
 1437 the records are needed by the individual's patient's counsel for
 1438 adequate representation.

1439 (c) A petition for involuntary placement is filed and the
 1440 records are needed by the state attorney to evaluate and confirm
 1441 the allegations set forth in the petition or to prosecute the
 1442 petition. However, the state attorney may not use clinical
 1443 records obtained under this part for the purpose of criminal
 1444 investigation or prosecution, or for any other purpose not
 1445 authorized by this part.

1446 ~~(d)(e)~~ The court orders such release. In determining
 1447 whether there is good cause for disclosure, the court shall
 1448 weigh the need for the information to be disclosed against the
 1449 possible harm of disclosure to the individual person to whom
 1450 such information pertains.

Page 50 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1451 ~~(e)(d)~~ The individual patient is committed to, or is to be
 1452 returned to, the Department of Corrections ~~from the Department~~
 1453 ~~of Children and Families~~, and the Department of Corrections
 1454 requests such records. These records shall be furnished without
 1455 charge to the Department of Corrections.

1456 (3) Information from the clinical record may be released in
 1457 the following circumstances:

1458 (a) When a patient has declared an intention to harm other
 1459 persons. When such declaration has been made, the administrator
 1460 may authorize the release of sufficient information to provide
 1461 adequate warning to the person threatened with harm by the
 1462 patient.

1463 (b) When the administrator of the facility or secretary of
 1464 the department deems release to a qualified researcher as
 1465 defined in administrative rule, an aftercare treatment provider,
 1466 or an employee or agent of the department is necessary for
 1467 treatment of the patient, maintenance of adequate records,
 1468 compilation of treatment data, aftercare planning, or evaluation
 1469 of programs.

1471 For the purpose of determining whether a person meets the
 1472 criteria for involuntary outpatient placement or for preparing
 1473 the proposed treatment plan pursuant to s. 394.4655, the
 1474 clinical record may be released to the state attorney, the
 1475 public defender or the patient's private legal counsel, the
 1476 court, and to the appropriate mental health professionals,
 1477 including the service provider identified in s. 394.4655(7)(b)
 1478 ~~s. 394.4655(6)(b)2-~~, in accordance with state and federal law.

1479 (10) An individual held for examination or admitted for

Page 51 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1480 ~~treatment Patients~~ shall have reasonable access to his or her
 1481 ~~their~~ clinical records, unless such access is determined by the
 1482 individual's patient's physician to be harmful to the individual
 1483 ~~patient~~. If the individual's patient's right to inspect his or
 1484 her clinical record is restricted by the facility, written
 1485 notice of such restriction shall be given to the individual
 1486 ~~patient~~ and the individual's patient's guardian, guardian
 1487 advocate, health care surrogate or proxy, or attorney, and
 1488 representative. In addition, the restriction shall be recorded
 1489 in the clinical record, together with the reasons for it. The
 1490 restriction of an individual's a patient's right to inspect his
 1491 or her clinical record shall expire after 7 days but may be
 1492 renewed, after review, for subsequent 7-day periods.

1493 Section 10. Paragraphs (a) through (m) of subsection (1) of
 1494 section 394.462, Florida Statutes, are amended, and paragraph
 1495 (n) is added to that subsection, to read:

1496 394.462 Transportation.—

1497 (1) TRANSPORTATION TO A RECEIVING OR DETOXIFICATION
 1498 FACILITY.—

1499 (a) Each county shall designate a single law enforcement
 1500 agency within the county, or portions thereof, to take an
 1501 individual a person into custody upon the entry of an ex parte
 1502 order or the execution of a certificate for involuntary
 1503 examination by an authorized professional and to transport that
 1504 individual person to the nearest receiving facility for
 1505 examination. The designated law enforcement agency may decline
 1506 to transport the individual person to a receiving or
 1507 detoxification facility only if:

1508 1. The county or jurisdiction designated by the county has

Page 52 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1509 contracted ~~on an annual basis~~ with an emergency medical
 1510 transport service or private transport company for
 1511 transportation of individuals ~~persons~~ to receiving facilities
 1512 ~~pursuant to this section at the sole cost of the county;~~ and

1513 2. The law enforcement agency and the emergency medical
 1514 transport service or private transport company agree that the
 1515 continued presence of law enforcement personnel is not necessary
 1516 for the safety of the individuals being transported ~~person~~ or
 1517 others.

1518 3. The jurisdiction designated by the county may seek
 1519 reimbursement for transportation expenses. The party responsible
 1520 for payment for such transportation is the person receiving the
 1521 transportation. The county shall seek reimbursement from the
 1522 following sources in the following order:

1523 a. From an insurance company, health care corporation, or
 1524 other source, if the individual being transported ~~person~~
 1525 ~~receiving the transportation~~ is covered by an insurance policy
 1526 or subscribes to a health care corporation or other source for
 1527 payment of such expenses.

1528 b. From the individual being transported ~~person receiving~~
 1529 ~~the transportation~~.

1530 c. From a financial settlement for medical care, treatment,
 1531 hospitalization, or transportation payable or accruing to the
 1532 injured party.

1533 (b) Any company that transports a patient pursuant to this
 1534 subsection is considered an independent contractor and is solely
 1535 liable for the safe and dignified transportation of the patient.
 1536 Such company must be insured and provide no less than \$100,000
 1537 in liability insurance with respect to the transportation of

576-02889-15

20157070__

1538 patients.

1539 (c) Any company that contracts with a governing board of a
 1540 county to transport patients shall comply with the applicable
 1541 rules of the department to ensure the safety and dignity of the
 1542 patients.

1543 (d) When a law enforcement officer takes custody of a
 1544 person pursuant to this part, the officer may request assistance
 1545 from emergency medical personnel if such assistance is needed
 1546 for the safety of the officer or the person in custody.

1547 (e) When a member of a mental health overlay program or a
 1548 mobile crisis response service is a professional authorized to
 1549 initiate an involuntary examination pursuant to s. 394.463 and
 1550 that professional evaluates a person and determines that
 1551 transportation to a receiving facility is needed, the service,
 1552 at its discretion, may transport the person to the facility or
 1553 may call on the law enforcement agency or other transportation
 1554 arrangement best suited to the needs of the patient.

1555 (f) When a ~~any~~ law enforcement officer has custody of a
 1556 person, based on either noncriminal or minor criminal behavior,
 1557 a misdemeanor, or a felony other than a forcible felony as
 1558 defined in s. 776.08, who that meets the statutory guidelines
 1559 for involuntary examination under this part, the law enforcement
 1560 officer shall transport the individual ~~person~~ to the nearest
 1561 receiving facility for examination.

1562 (g) When any law enforcement officer has arrested a person
 1563 for a forcible felony as defined in s. 776.08 and it appears
 1564 that the person meets the criteria ~~statutory guidelines~~ for
 1565 involuntary examination ~~or placement~~ under this part, such
 1566 person shall first be processed in the same manner as any other

576-02889-15

20157070__

1567 criminal suspect. The law enforcement agency shall thereafter
 1568 immediately notify the nearest public receiving facility, which
 1569 shall be responsible for promptly arranging for the examination
 1570 and treatment of the person. A receiving facility ~~may not~~ ~~is not~~
 1571 ~~required to~~ admit a person charged with a forcible felony as
 1572 defined in s. 776.08 ~~crime~~ for whom the facility determines and
 1573 documents that it is unable to provide adequate security, but
 1574 shall provide ~~mental health~~ examination and treatment to the
 1575 person at the location where he or she is held.

1576 (h) If the appropriate law enforcement officer believes
 1577 that a person has an emergency medical condition as defined in
 1578 s. 395.002, the person may be first transported to a hospital
 1579 for emergency medical treatment, regardless of whether the
 1580 hospital is a designated receiving facility.

1581 (i) The costs of transportation, evaluation,
 1582 hospitalization, and treatment incurred under this subsection by
 1583 persons who have been arrested for violations of any state law
 1584 or county or municipal ordinance may be recovered as provided in
 1585 s. 901.35.

1586 (j) The nearest receiving facility must accept persons
 1587 brought by law enforcement officers for involuntary examination.

1588 (k) Each law enforcement agency shall develop a memorandum
 1589 of understanding with each receiving facility within the law
 1590 enforcement agency's jurisdiction which reflects a single set of
 1591 protocols for the safe and secure transportation of the person
 1592 and transfer of custody of the person. These protocols must also
 1593 address crisis intervention measures.

1594 (l) When a jurisdiction has entered into a contract with an
 1595 emergency medical transport service or a private transport

Page 55 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1596 company for transportation of persons to receiving facilities,
 1597 such service or company shall be given preference for
 1598 transportation of persons from nursing homes, assisted living
 1599 facilities, adult day care centers, or adult family-care homes,
 1600 unless the behavior of the person being transported is such that
 1601 transportation by a law enforcement officer is necessary.

1602 (m) Nothing in this section shall be construed to limit
 1603 emergency examination and treatment of incapacitated persons
 1604 provided in accordance with the provisions of s. 401.445.

1605 (n) Upon the request of an individual who appears to meet
 1606 criteria for voluntary admission under s. 394.4625(1) (a), a law
 1607 enforcement officer may transport him or her to a mental health
 1608 receiving facility, addictions receiving facility, or
 1609 detoxification facility.

1610 Section 11. Subsections (1), (4), and (5) of section
 1611 394.4625, Florida Statutes, are amended and paragraph (c) of
 1612 subsection (2) of that section is added, to read:

1613 394.4625 Voluntary admissions.—

1614 (1) EXAMINATION AND TREATMENT AUTHORITY TO RECEIVE
 1615 PATIENTS.—

1616 (a) In order to be admitted to a facility on a voluntary
 1617 status ~~A facility may receive~~ for observation, diagnosis, or
 1618 ~~treatment; any person 18 years of age or older making~~
 1619 ~~application by express and informed consent for admission or any~~
 1620 ~~person age 17 or under for whom such application is made by his~~
 1621 ~~or her guardian. If found to~~

1622 1. An individual must show evidence of mental illness or
 1623 substance abuse impairment; and, to be competent to provide
 1624 ~~express and informed consent, and to be suitable for treatment,~~

Page 56 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__

1625 ~~such person 18 years of age or older may be admitted to the~~
 1626 ~~facility. A person age 17 or under may be admitted only after a~~
 1627 ~~hearing to verify the voluntariness of the consent.~~

1628 2. An individual must be suitable for treatment by the
 1629 facility.

1630 3. An adult must provide, and be competent to provide,
 1631 express and informed consent.

1632 4. A minor may only be admitted on the basis of the express
 1633 and informed consent of the minor's guardian in conjunction with
 1634 the consent of the minor, except that a minor may be admitted to
 1635 an addictions receiving facility or detoxification facility by
 1636 his or her own consent without consent of the minor's guardian,
 1637 if a physician documents in the clinical record that the minor
 1638 has a substance abuse impairment. If the minor is admitted by
 1639 his or her own consent and without consent of the minor's
 1640 guardian, the facility must request the minor's permission to
 1641 notify an adult family member or friend of the minor's voluntary
 1642 admission into the facility.

1643 a. The consent of the minor is an affirmative agreement by
 1644 the minor to remain at the facility for examination or
 1645 treatment, and failure to object does not constitute consent.

1646 b. The minor's consent must be verified through a clinical
 1647 assessment that is documented in the clinical record and
 1648 conducted within 12 hours after arrival at the facility by a
 1649 licensed professional authorized to initiate an involuntary
 1650 examination pursuant to s. 394.463.

1651 c. In verifying the minor's consent, and using language
 1652 that is appropriate to the minor's age, experience, maturity,
 1653 and condition, the examining professional must provide the minor

576-02889-15 20157070__

1654 with an explanation as to why the minor will be examined and
 1655 treated, what the minor can expect while in the facility, and
 1656 when the minor may expect to be released. The examining
 1657 professional must determine and document that the minor is able
 1658 to understand the information.

1659 d. Unless the minor's consent is verified pursuant to this
 1660 section, a petition for involuntary inpatient placement shall be
 1661 filed with the court within 1 court working day after his or her
 1662 arrival or the minor must be released to his or her guardian.

1663 (b) A mental health overlay program or a mobile crisis
 1664 response service or a licensed professional who is authorized to
 1665 initiate an involuntary examination pursuant to s. 394.463 and
 1666 is employed by a community mental health center or clinic must,
 1667 pursuant to district procedure approved by the respective
 1668 district administrator, conduct an initial assessment of the
 1669 ability of the following persons to give express and informed
 1670 consent to treatment before such persons may be admitted
 1671 voluntarily:

1672 1. A person 60 years of age or older for whom transfer is
 1673 being sought from a nursing home, assisted living facility,
 1674 adult day care center, or adult family-care home, when such
 1675 person has been diagnosed as suffering from dementia.

1676 2. A person 60 years of age or older for whom transfer is
 1677 being sought from a nursing home pursuant to s. 400.0255(12).

1678 3. A person for whom all decisions concerning medical
 1679 treatment are currently being lawfully made by the health care
 1680 surrogate or proxy designated under chapter 765.

1681 (c) When an initial assessment of the ability of a person
 1682 to give express and informed consent to treatment is required

576-02889-15

20157070__

1683 under this section, and a mobile crisis response service does
 1684 not respond to the request for an assessment within 2 hours
 1685 after the request is made or informs the requesting facility
 1686 that it will not be able to respond within 2 hours after the
 1687 request is made, the requesting facility may arrange for
 1688 assessment by any licensed professional authorized to initiate
 1689 an involuntary examination pursuant to s. 394.463 who is not
 1690 employed by or under contract with, and does not have a
 1691 financial interest in, either the facility initiating the
 1692 transfer or the receiving facility to which the transfer may be
 1693 made.

1694 (d) A facility may not admit as a voluntary patient a
 1695 person who has been adjudicated incapacitated, unless the
 1696 condition of incapacity has been judicially removed. If a
 1697 facility admits as a voluntary patient a person who is later
 1698 determined to have been adjudicated incapacitated, and the
 1699 condition of incapacity had not been removed by the time of the
 1700 admission, the facility must either discharge the patient or
 1701 transfer the patient to involuntary status.

1702 (e) The health care surrogate or proxy of an individual on
 1703 a voluntary status patient may not consent to the provision of
 1704 mental health treatment or substance abuse treatment for that
 1705 individual the patient. An individual on voluntary status A
 1706 voluntary patient who is unwilling or unable to provide express
 1707 and informed consent to mental health treatment must ~~either~~ be
 1708 discharged or transferred to involuntary status.

1709 (f) Within 24 hours after admission of a voluntary patient,
 1710 the admitting physician shall document in the patient's clinical
 1711 record that the patient is able to give express and informed

Page 59 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1712 consent for admission. If the patient is not able to give
 1713 express and informed consent for admission, the facility shall
 1714 either discharge the patient or transfer the patient to
 1715 involuntary status pursuant to subsection (5).

1716 (2) ~~RELEASE OR DISCHARGE OF VOLUNTARY PATIENTS.-~~

1717 (a) A facility shall discharge a voluntary patient:

1718 1. Who has sufficiently improved so that retention in the
 1719 facility is no longer desirable. A patient may also be
 1720 discharged to the care of a community facility.

1721 2. Who revokes consent to admission or requests discharge.
 1722 A voluntary patient or a relative, friend, or attorney of the
 1723 patient may request discharge either orally or in writing at any
 1724 time following admission to the facility. The patient must be
 1725 discharged within 24 hours of the request, unless the request is
 1726 rescinded or the patient is transferred to involuntary status
 1727 pursuant to this section. The 24-hour time period may be
 1728 extended by a treatment facility when necessary for adequate
 1729 discharge planning, but shall not exceed 3 days exclusive of
 1730 weekends and holidays. If the patient, or another on the
 1731 patient's behalf, makes an oral request for discharge to a staff
 1732 member, such request shall be immediately entered in the
 1733 patient's clinical record. If the request for discharge is made
 1734 by a person other than the patient, the discharge may be
 1735 conditioned upon the express and informed consent of the
 1736 patient.

1737 (b) A voluntary patient who has been admitted to a facility
 1738 and who refuses to consent to or revokes consent to treatment
 1739 shall be discharged within 24 hours after such refusal or
 1740 revocation, unless transferred to involuntary status pursuant to

Page 60 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1741 this section or unless the refusal or revocation is freely and
1742 voluntarily rescinded by the patient.

1743 (c) An individual on voluntary status who is currently
1744 charged with a crime shall be returned to the custody of a law
1745 enforcement officer upon release or discharge from a facility,
1746 unless the individual has been released from law enforcement
1747 custody by posting of a bond, by a pretrial conditional release,
1748 or by other judicial release.

1749 (4) TRANSFER TO VOLUNTARY STATUS.—An individual on
1750 involuntary status patient who has been assessed and certified
1751 by a physician or psychologist as competent to provide express
1752 and informed consent and who applies to be transferred to
1753 voluntary status shall be transferred to voluntary status
1754 immediately, unless the individual patient has been charged with
1755 a crime, or has been involuntarily placed for treatment by a
1756 court pursuant to s. 394.467 and continues to meet the criteria
1757 for involuntary placement. When transfer to voluntary status
1758 occurs, notice shall be given as provided in s. 394.4599.

1759 (5) TRANSFER TO INVOLUNTARY STATUS.—If an individual on
1760 When a voluntary status patient, or an authorized person on the
1761 individual's patient's behalf, makes a request for discharge,
1762 the request for discharge, unless freely and voluntarily
1763 rescinded, must be communicated to a physician, ~~clinical~~
1764 psychologist, or psychiatrist as quickly as possible within, but
1765 not later than 12 hours after the request is made. If the
1766 individual patient meets the criteria for involuntary placement,
1767 the individual must be transferred to a designated receiving
1768 facility and the administrator of the receiving facility where
1769 the individual is held must file with the court a petition for

Page 61 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1770 involuntary placement, within 2 court working days after the
1771 request ~~for discharge~~ is made. If the petition is not filed
1772 within 2 court working days, the individual must patient shall
1773 be discharged. Pending the filing of the petition, the
1774 individual patient may be held and emergency mental health
1775 treatment rendered in the least restrictive manner, upon the
1776 written order of a physician, if it is determined that such
1777 treatment is necessary for the safety of the individual patient
1778 or others.

1779 Section 12. Section 394.463, Florida Statutes, is amended
1780 to read:

1781 394.463 Involuntary examination.—

1782 (1) CRITERIA.—A person may be subject to an taken to a
1783 receiving facility for involuntary examination if there is
1784 reason to believe that he or she the person has a mental illness
1785 or substance abuse impairment and because of this his or her
1786 mental illness or substance abuse impairment:

1787 (a)1. The person has refused voluntary examination after
1788 conscientious explanation and disclosure of the purpose of the
1789 examination; or

1790 2. The person is unable to determine for himself or herself
1791 whether examination is necessary; and

1792 (b)1. Without care or treatment, the person is likely to
1793 suffer from neglect or refuse to care for himself or herself;
1794 such neglect or refusal poses a real and present threat of
1795 substantial harm to his or her well-being; and it is not
1796 apparent that such harm may be avoided through the help of
1797 willing family members or friends or the provision of other
1798 services; or

Page 62 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1799 2. There is a substantial likelihood that without care or
1800 treatment the person will cause serious bodily harm to himself
1801 or herself or others in the near future, as evidenced by recent
1802 behavior.

1803 (2) INVOLUNTARY EXAMINATION.-

1804 (a) An involuntary examination may be initiated by any one
1805 of the following means:

1806 1. A court may enter an ex parte order stating that an
1807 individual a person appears to meet the criteria for involuntary
1808 examination, giving the findings on which that conclusion is
1809 based. The ex parte order for involuntary examination must be
1810 based on sworn testimony, written or oral, which includes
1811 specific facts that support the finding that the criteria have
1812 been met. Any behavior relied on for the issuance of an ex parte
1813 order must have occurred within the preceding 7 calendar days.
1814 The order must specify whether the individual must be taken to a
1815 mental health facility, detoxification facility, or addictions
1816 receiving facility. If other less restrictive means are not
1817 available, such as voluntary appearance for outpatient
1818 evaluation, A law enforcement officer, or other designated agent
1819 of the court, shall take the individual person into custody and
1820 deliver him or her to the nearest receiving facility of the type
1821 specified in the order for involuntary examination. However, if
1822 the county in which the individual is taken into custody has a
1823 transportation exception plan specifying a central receiving
1824 facility, the law enforcement officer shall transport the
1825 individual to the central receiving facility pursuant to the
1826 plan. The order of the court order must shall be made a part of
1827 the patient's clinical record. A No fee may not shall be charged

Page 63 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1828 for the filing of an order under this subsection. Any ~~receiving~~
1829 facility accepting the individual patient based on the court's
1830 ~~this~~ order must send a copy of the order to the Agency for
1831 Health Care Administration on the next working day. The order is
1832 ~~shall be~~ valid only until executed or, if not executed, for the
1833 period specified in the order itself. If no time limit is
1834 specified in the order, the order is shall be valid for 7 days
1835 after the date it that the order was signed.

1836 2. A law enforcement officer shall take a person who
1837 appears to meet the criteria for involuntary examination into
1838 custody and deliver ~~the person or have him or her delivered~~ to
1839 the nearest mental health receiving facility, addictions
1840 receiving facility, or detoxification facility, whichever the
1841 officer determines is most appropriate for examination. However,
1842 if the county in which the individual taken into custody has a
1843 transportation exception plan specifying a central receiving
1844 facility, the law enforcement officer shall transport the
1845 individual to the central receiving facility pursuant to the
1846 plan. The officer shall complete execute a written report
1847 detailing the circumstances under which the individual person
1848 was taken into custody, and The report shall be made a part of
1849 the patient's clinical record. Any receiving facility or
1850 detoxification facility accepting the individual patient based
1851 on the this report must send a copy of the report to the Agency
1852 for Health Care Administration on the next working day.
1853 3. A physician, physician assistant, clinical psychologist,
1854 advanced registered nurse practitioner certified pursuant to s.
1855 464.012, psychiatric nurse, mental health counselor, marriage
1856 and family therapist, or clinical social worker may execute a

Page 64 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__

1857 certificate stating that he or she has examined the individual a
 1858 ~~person~~ within the preceding 48 hours and finds that the
 1859 individual person appears to meet the criteria for involuntary
 1860 examination and stating the observations upon which that
 1861 conclusion is based. The certificate must specify whether the
 1862 individual is to be taken to a mental health receiving facility,
 1863 an addictions receiving facility, or a detoxification facility,
 1864 and must include specific facts supporting the conclusion that
 1865 the individual would benefit from services provided by the type
 1866 of facility specified. If other less restrictive means are not
 1867 available, such as voluntary appearance for outpatient
 1868 evaluation, A law enforcement officer shall take the individual
 1869 person named in the certificate into custody and deliver him or
 1870 her to the nearest ~~receiving~~ facility of the type specified in
 1871 the certificate for involuntary examination. However, if the
 1872 county in which the individual is taken into custody has a
 1873 transportation exception plan specifying a central receiving
 1874 facility, the law enforcement officer shall transport the
 1875 individual to the central receiving facility pursuant to the
 1876 plan. A law enforcement officer may only take an individual into
 1877 custody on the basis of a certificate within 7 calendar days
 1878 after execution of the certificate. The law enforcement officer
 1879 shall ~~complete~~ execute a written report detailing the
 1880 circumstances under which the individual person was taken into
 1881 custody. The report and certificate shall be made a part of the
 1882 ~~patient's~~ clinical record. Any ~~receiving~~ facility accepting the
 1883 individual patient based on ~~the~~ this certificate must send a
 1884 copy of the certificate to the Agency for Health Care
 1885 Administration on the next working day.

Page 65 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__

1886 (b) An individual may ~~A person shall~~ not be removed from a
 1887 ~~any~~ program or residential placement licensed under chapter 400
 1888 or chapter 429 and transported to a receiving facility for
 1889 involuntary examination unless an ex parte order, a professional
 1890 certificate, or a law enforcement officer's report is first
 1891 prepared. If the condition of the individual person is such that
 1892 preparation of a law enforcement officer's report is not
 1893 practicable before removal, the report ~~must~~ shall be completed
 1894 as soon as possible after removal, but ~~in any case~~ before the
 1895 individual person is transported to a receiving facility. A
 1896 receiving facility admitting an individual a person for
 1897 involuntary examination who is not accompanied by the required
 1898 ex parte order, professional certificate, or law enforcement
 1899 officer's report ~~must~~ shall notify the Agency for Health Care
 1900 Administration of such admission by certified mail ~~by no later~~
 1901 ~~than~~ the next working day. ~~The provisions of this paragraph do~~
 1902 ~~not apply when transportation is provided by the patient's~~
 1903 ~~family or guardian.~~
 1904 (c) A law enforcement officer acting in accordance with an
 1905 ex parte order issued pursuant to this subsection may serve and
 1906 execute such order on any day of the week, at any time of the
 1907 day or night.
 1908 (d) A law enforcement officer acting in accordance with an
 1909 ex parte order issued pursuant to this subsection may use such
 1910 reasonable physical force as is necessary to gain entry to the
 1911 premises, and any dwellings, buildings, or other structures
 1912 located on the premises, and to take custody of the person who
 1913 is the subject of the ex parte order.
 1914 (e) Petitions and ~~The Agency for Health Care Administration~~

Page 66 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1915 ~~shall receive and maintain the copies of ex parte orders,~~
 1916 ~~involuntary outpatient placement orders, involuntary outpatient~~
 1917 ~~placement petitions and orders issued pursuant to s. 394.4655,~~
 1918 ~~involuntary inpatient placement petitions and orders issued~~
 1919 ~~pursuant to s. 394.467, professional certificates, and law~~
 1920 ~~enforcement officers' reports are. These documents shall be~~
 1921 ~~considered part of the clinical record, governed by the~~
 1922 ~~provisions of s. 394.4615. The agency shall prepare annual~~
 1923 ~~reports analyzing the data obtained from these documents,~~
 1924 ~~without information identifying individuals held for examination~~
 1925 ~~or admitted for mental health and substance abuse treatment~~
 1926 ~~patients, and shall provide copies of reports to the department,~~
 1927 ~~the President of the Senate, the Speaker of the House of~~
 1928 ~~Representatives, and the minority leaders of the Senate and the~~
 1929 ~~House of Representatives.~~

1930 (f) An individual held for examination ~~A patient~~ shall be
 1931 examined by a physician, a clinical psychologist, or a
 1932 psychiatric nurse at a receiving facility without unnecessary
 1933 delay and may, upon the order of a physician, be given emergency
 1934 mental health treatment if it is determined that such treatment
 1935 is necessary for the safety of the individual patient or others.
 1936 ~~The patient may not be released by the receiving facility or its~~
 1937 ~~contractor without the documented approval of a psychiatrist, a~~
 1938 ~~clinical psychologist, or, if the receiving facility is a~~
 1939 ~~hospital, the release may also be approved by an attending~~
 1940 ~~emergency department physician with experience in the diagnosis~~
 1941 ~~and treatment of mental and nervous disorders and after~~
 1942 ~~completion of an involuntary examination pursuant to this~~
 1943 ~~subsection. However, a patient may not be held in a receiving~~

Page 67 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

1944 ~~facility for involuntary examination longer than 72 hours.~~

1945 (g) An individual may not be held for involuntary
 1946 examination for more than 72 hours from the time of the
 1947 individual's arrival at the facility, except that this period
 1948 may be extended by 48 hours if a physician documents in the
 1949 clinical record that the individual has ongoing symptoms of
 1950 substance intoxication or substance withdrawal and the
 1951 individual would likely experience significant clinical benefit
 1952 from detoxification services. This determination must be made
 1953 based on a face-to-face examination conducted by the physician
 1954 no less than 48 hours and not more than 72 hours after the
 1955 individual's arrival at the facility. Based on the individual's
 1956 needs, one of the following actions must be taken within the
 1957 involuntary examination period:

1958 1. The individual shall be released with the approval of a
 1959 psychiatrist, psychiatric nurse, or psychologist. However, if
 1960 the examination is conducted in a hospital, an emergency
 1961 department physician may approve the release. If the examination
 1962 is conducted in an addictions receiving facility or
 1963 detoxification facility, a physician may approve release. The
 1964 professional approving release must have personally conducted
 1965 the involuntary examination;

1966 2. The individual shall be asked to provide express and
 1967 informed consent for voluntary admission if a physician or
 1968 psychologist has determined that the individual is competent to
 1969 consent to treatment; or

1970 3. A petition for involuntary placement shall be completed
 1971 and filed in the circuit court by the receiving facility
 1972 administrator if involuntary outpatient or inpatient placement

Page 68 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__

1973 is deemed necessary. If the 72-hour period ends on a weekend or
 1974 legal holiday, the petition must be filed by the next working
 1975 day. If inpatient placement is deemed necessary, the least
 1976 restrictive treatment consistent with the optimum improvement of
 1977 the individual's condition must be made available.

1978 (h) An individual released from a receiving or treatment
 1979 facility on a voluntary or involuntary basis who is currently
 1980 charged with a crime shall be returned to the custody of law
 1981 enforcement, unless the individual has been released from law
 1982 enforcement custody by posting of a bond, by a pretrial
 1983 conditional release, or by other judicial release.

1984 (i) If an individual ~~A person~~ for whom an involuntary
 1985 examination has been initiated who is being evaluated or treated
 1986 at a hospital for an emergency medical condition specified in s.
 1987 395.002 the involuntary examination period must be examined by a
 1988 receiving facility within 72 hours. The 72-hour period begins
 1989 when the individual patient arrives at the hospital and ceases
 1990 when a the attending physician documents that the individual
 1991 patient has an emergency medical condition. The 72-hour period
 1992 resumes when the physician documents that the emergency medical
 1993 condition has stabilized or does not exist. If the patient is
 1994 examined at a hospital providing emergency medical services by a
 1995 professional qualified to perform an involuntary examination and
 1996 is found as a result of that examination not to meet the
 1997 criteria for involuntary outpatient placement pursuant to s.
 1998 394.4655(1) or involuntary inpatient placement pursuant to s.
 1999 394.467(1), the patient may be offered voluntary placement, if
 2000 appropriate, or released directly from the hospital providing
 2001 emergency medical services. The finding by the professional that

Page 69 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__

2002 ~~the patient has been examined and does not meet the criteria for~~
 2003 ~~involuntary inpatient placement or involuntary outpatient~~
 2004 ~~placement must be entered into the patient's clinical record.~~
 2005 ~~Nothing in this paragraph is intended to prevent A hospital~~
 2006 ~~providing emergency medical services may transfer an individual~~
 2007 ~~from appropriately transferring a patient to another hospital~~
 2008 ~~before prior to stabilization if, provided the requirements of~~
 2009 ~~s. 395.1041(3)(c) are have been met. One of the following~~
 2010 ~~actions must occur within 12 hours after a physician documents~~
 2011 ~~that the individual's emergency medical condition has stabilized~~
 2012 ~~or does not exist:~~

2013 ~~(h) One of the following must occur within 12 hours after~~
 2014 ~~the patient's attending physician documents that the patient's~~
 2015 ~~medical condition has stabilized or that an emergency medical~~
 2016 ~~condition does not exist:~~

2017 1. The individual shall be examined by a physician,
 2018 psychiatric nurse or psychologist and, if found not to meet the
 2019 criteria for involuntary examination pursuant to s. 394.463,
 2020 shall be released directly from the hospital providing the
 2021 emergency medical services. The results of the examination,
 2022 including the final disposition, shall be entered into the
 2023 clinical records; or

2024 2. The individual shall be transferred to a receiving
 2025 facility for examination if appropriate medical and mental
 2026 health treatment is available. However, the receiving facility
 2027 must be notified of the transfer within 2 hours after the
 2028 individual's condition has been stabilized or after
 2029 determination that an emergency medical condition does not
 2030 exist. The patient must be examined by a designated receiving

Page 70 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2031 ~~facility and released, or~~

2032 2. ~~The patient must be transferred to a designated~~
 2033 ~~receiving facility in which appropriate medical treatment is~~
 2034 ~~available. However, the receiving facility must be notified of~~
 2035 ~~the transfer within 2 hours after the patient's condition has~~
 2036 ~~been stabilized or after determination that an emergency medical~~
 2037 ~~condition does not exist.~~

2038 ~~(i) Within the 72-hour examination period or, if the 72~~
 2039 ~~hours ends on a weekend or holiday, no later than the next~~
 2040 ~~working day thereafter, one of the following actions must be~~
 2041 ~~taken, based on the individual needs of the patient:~~

2042 1. ~~The patient shall be released, unless he or she is~~
 2043 ~~charged with a crime, in which case the patient shall be~~
 2044 ~~returned to the custody of a law enforcement officer;~~

2045 2. ~~The patient shall be released, subject to the provisions~~
 2046 ~~of subparagraph 1., for voluntary outpatient treatment;~~

2047 3. ~~The patient, unless he or she is charged with a crime,~~
 2048 ~~shall be asked to give express and informed consent to placement~~
 2049 ~~as a voluntary patient, and, if such consent is given, the~~
 2050 ~~patient shall be admitted as a voluntary patient; or~~

2051 4. ~~A petition for involuntary placement shall be filed in~~
 2052 ~~the circuit court when outpatient or inpatient treatment is~~
 2053 ~~deemed necessary. When inpatient treatment is deemed necessary,~~
 2054 ~~the least restrictive treatment consistent with the optimum~~
 2055 ~~improvement of the patient's condition shall be made available.~~
 2056 ~~When a petition is to be filed for involuntary outpatient~~
 2057 ~~placement, it shall be filed by one of the petitioners specified~~
 2058 ~~in s. 394.4655(3)(a). A petition for involuntary inpatient~~
 2059 ~~placement shall be filed by the facility administrator.~~

Page 71 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2060 (3) NOTICE OF RELEASE.—Notice of the release shall be given
 2061 to the individual's patient's guardian, health care surrogate or
 2062 proxy, or representative, to any person who executed a
 2063 certificate admitting the individual patient to the receiving
 2064 facility, and to any court ~~that which~~ ordered the individual's
 2065 examination patient's evaluation.

2066 Section 13. Section 394.4655, Florida Statutes, is amended
 2067 to read:

2068 394.4655 Involuntary outpatient placement.—

2069 (1) CRITERIA FOR INVOLUNTARY OUTPATIENT PLACEMENT.—An
 2070 individual ~~A person~~ may be ordered to involuntary outpatient
 2071 placement upon a finding of the court ~~that~~ by clear and
 2072 convincing evidence that:

2073 (a) The individual is an adult ~~person is 18 years of age or~~
 2074 ~~older;~~

2075 (b) The individual ~~person~~ has a mental illness or substance
 2076 abuse impairment;

2077 (c) The individual ~~person~~ is unlikely to survive safely in
 2078 the community without supervision, based on a clinical
 2079 determination;

2080 (d) The individual ~~person~~ has a history of lack of
 2081 compliance with treatment for mental illness or substance abuse
 2082 impairment;

2083 (e) The individual ~~person~~ has:

2084 1. Within ~~At least twice within~~ the immediately preceding
 2085 36 months, been involuntarily admitted to a receiving or
 2086 treatment facility ~~as defined in s. 394.455~~, or has received
 2087 mental health or substance abuse services in a forensic or
 2088 correctional facility. The 36-month period does not include any

Page 72 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2089 period during which the individual ~~person~~ was admitted or
2090 incarcerated; or

2091 2. Engaged in one or more acts of serious violent behavior
2092 toward self or others, or attempts at serious bodily harm to
2093 himself or herself or others, within the preceding 36 months;

2094 (f) ~~Due to the person is, as a result of~~ his or her mental
2095 ~~illness or substance abuse impairment, the individual is,~~
2096 unlikely to voluntarily participate in the recommended treatment
2097 plan and ~~either he or she~~ has refused voluntary placement for
2098 treatment after sufficient and conscientious explanation and
2099 disclosure of the purpose of placement for treatment or ~~he or~~
2100 ~~she~~ is unable to determine for himself or herself whether
2101 placement is necessary;

2102 (g) In view of the individual's ~~person's~~ treatment history
2103 and current behavior, the individual ~~person~~ is in need of
2104 involuntary outpatient placement in order to prevent a relapse
2105 or deterioration that would be likely to result in serious
2106 bodily harm to self ~~himself or herself~~ or others, or a
2107 substantial harm to his or her well-being as set forth in s.
2108 394.463(1);

2109 (h) It is likely that the individual ~~person~~ will benefit
2110 from involuntary outpatient placement; and

2111 (i) All available, less restrictive alternatives that ~~would~~
2112 offer an opportunity for improvement of his or her condition
2113 have been judged to be inappropriate or unavailable.

2114 (2) INVOLUNTARY OUTPATIENT PLACEMENT.—

2115 (a) ~~An individual~~ A patient who is being recommended for
2116 involuntary outpatient placement by the administrator of the
2117 receiving facility where ~~he or she~~ the patient has been examined

Page 73 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2118 may be retained by the facility after adherence to the notice
2119 procedures provided in s. 394.4599.

2120 1. The recommendation must be supported by the opinion of a
2121 psychiatrist and the second opinion of a ~~clinical~~ psychologist
2122 or another psychiatrist, both of whom have personally examined
2123 the individual ~~patient~~ within the preceding 72 hours, that the
2124 criteria for involuntary outpatient placement are met. However,
2125 in a county having a population of fewer than 50,000, if the
2126 administrator certifies that a psychiatrist or clinical
2127 psychologist is not available to provide the second opinion, the
2128 second opinion may be provided by a ~~licensed~~ physician who has
2129 postgraduate training and experience in diagnosis and treatment
2130 of mental and nervous disorders or by a psychiatric nurse. Any
2131 second opinion authorized in this subparagraph may be conducted
2132 through a face-to-face examination, in person or by electronic
2133 means. Such recommendation must be entered on an involuntary
2134 outpatient placement certificate that authorizes the receiving
2135 facility to retain the individual ~~patient~~ pending completion of
2136 a hearing. The certificate shall be made a part of the patient's
2137 clinical record.

2138 2. If the individual ~~patient~~ has been stabilized and no
2139 longer meets the criteria for involuntary examination pursuant
2140 to s. 394.463(1), ~~he or she~~ the patient must be released from
2141 the receiving facility while awaiting the hearing for
2142 involuntary outpatient placement.

2143 3. Before filing a petition for involuntary outpatient
2144 treatment, the administrator of ~~the~~ a receiving facility or a
2145 designated department representative must identify the service
2146 provider that will have primary responsibility for service

Page 74 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2147 provision under an order for involuntary outpatient placement,
 2148 unless the individual person is otherwise participating in
 2149 outpatient psychiatric treatment and is not in need of public
 2150 financing for that treatment, in which case the individual, if
 2151 eligible, may be ordered to involuntary treatment pursuant to
 2152 the existing psychiatric treatment relationship.

2153 ~~4.3-~~ The service provider shall prepare a written proposed
 2154 treatment plan in consultation with the individual being held
 2155 ~~patient~~ or his or her ~~the patient's~~ guardian advocate, if
 2156 appointed, for the court's consideration for inclusion in the
 2157 involuntary outpatient placement order. The service provider
 2158 shall ~~also~~ provide a copy of the proposed treatment plan to the
 2159 individual patient and the administrator of the receiving
 2160 facility. The treatment plan must specify the nature and extent
 2161 of the individual's patient's mental illness or substance abuse
 2162 impairment, address the reduction of symptoms that necessitate
 2163 involuntary outpatient placement, and include measurable goals
 2164 and objectives for the services and treatment that are provided
 2165 to treat the individual's person's mental illness or substance
 2166 abuse impairment and assist the individual person in living and
 2167 functioning in the community or to prevent a relapse or
 2168 deterioration. Service providers may select and supervise other
 2169 ~~providers individuals~~ to implement specific aspects of the
 2170 treatment plan. The services in the treatment plan must be
 2171 deemed clinically appropriate by a physician, ~~clinical~~
 2172 psychologist, psychiatric nurse, mental health counselor,
 2173 marriage and family therapist, or clinical social worker who
 2174 consults with, or is employed or contracted by, the service
 2175 provider. The service provider must certify to the court in the

Page 75 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2176 proposed treatment plan whether sufficient services for
 2177 improvement and stabilization are currently available and
 2178 whether the service provider agrees to provide those services.
 2179 If the service provider certifies that the services in the
 2180 proposed treatment plan are not available, the petitioner may
 2181 not file the petition.

2182 (b) If an individual ~~a patient~~ in involuntary inpatient
 2183 placement meets the criteria for involuntary outpatient
 2184 placement, the administrator of the treatment facility may,
 2185 before the expiration of the period during which the treatment
 2186 facility is authorized to retain the individual patient,
 2187 recommend involuntary outpatient placement.

2188 1. The recommendation must be supported by the opinion of a
 2189 psychiatrist and the second opinion of a ~~clinical~~ psychologist
 2190 or another psychiatrist, both of whom have personally examined
 2191 the individual patient within the preceding 72 hours, that the
 2192 criteria for involuntary outpatient placement are met. However,
 2193 in a county having a population of fewer than 50,000, if the
 2194 administrator certifies that a psychiatrist or ~~clinical~~
 2195 psychologist is not available to provide the second opinion, the
 2196 second opinion may be provided by a licensed physician who has
 2197 postgraduate training and experience in diagnosis and treatment
 2198 of mental and nervous disorders or by a psychiatric nurse. Any
 2199 second opinion authorized in this subparagraph may be conducted
 2200 through a face-to-face examination, in person or by electronic
 2201 means. Such recommendation must be entered on an involuntary
 2202 outpatient placement certificate, and the certificate must be
 2203 made a part of the individual's patient's clinical record.

2204 ~~2.(e)1-~~ The administrator of the treatment facility shall

Page 76 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2205 provide a copy of the involuntary outpatient placement
 2206 certificate and a copy of the state mental health discharge form
 2207 to a department representative in the county where the
 2208 individual patient will be residing. ~~For persons who are leaving~~
 2209 ~~a state mental health treatment facility, the petition for~~
 2210 ~~involuntary outpatient placement must be filed in the county~~
 2211 ~~where the patient will be residing.~~

2212 ~~3.2-~~ The service provider that will have primary
 2213 responsibility for service provision shall be identified by the
 2214 designated department representative prior to the order for
 2215 involuntary outpatient placement and must, ~~before~~ prior to
 2216 filing a petition for involuntary outpatient placement, certify
 2217 to the court whether the services recommended in the
 2218 individual's patient's discharge plan are available in the local
 2219 community and whether the service provider agrees to provide
 2220 those services. The service provider must develop with the
 2221 individual patient, or the patient's guardian advocate, if one
 2222 is appointed, a treatment or service plan that addresses the
 2223 needs identified in the discharge plan. The plan must be deemed
 2224 to be clinically appropriate by a physician, ~~clinical~~
 2225 psychologist, psychiatric nurse, mental health counselor,
 2226 marriage and family therapist, or clinical social worker, ~~as~~
 2227 ~~defined in this chapter~~, who consults with, or is employed or
 2228 contracted by, the service provider.

2229 ~~3. If the service provider certifies that the services in~~
 2230 ~~the proposed treatment or service plan are not available, the~~
 2231 ~~petitioner may not file the petition.~~

2232 (3) PETITION FOR INVOLUNTARY OUTPATIENT PLACEMENT.—

2233 (a) A petition for involuntary outpatient placement may be

Page 77 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2234 filed by:

2235 1. The administrator of a mental health receiving facility,
 2236 an addictions receiving facility, or a detoxification facility;
 2237 or

2238 2. The administrator of a treatment facility.

2239 (b) Each required criterion for involuntary outpatient
 2240 placement must be alleged and substantiated in the petition for
 2241 involuntary outpatient placement. A copy of the certificate
 2242 recommending involuntary outpatient placement completed by a
 2243 qualified professional specified in subsection (2) must be
 2244 attached to the petition. A copy of the proposed treatment plan
 2245 must be attached to the petition. Before the petition is filed,
 2246 the service provider shall certify that the services in the
 2247 proposed treatment plan are available. If the necessary services
 2248 are not available in the ~~patient's~~ local community where the
 2249 individual will reside ~~to respond to the person's individual~~
 2250 ~~needs~~, the petition may not be filed.

2251 (c) ~~A~~ The petition for involuntary outpatient placement
 2252 must be filed in the county where the individual who is the
 2253 subject of the petition patient is located, unless the
 2254 individual patient is being placed from a state treatment
 2255 facility, in which case the petition must be filed in the county
 2256 where the individual patient will reside. When the petition is
 2257 ~~has been~~ filed, the clerk of the court shall provide copies of
 2258 the petition and the proposed treatment plan to the department,
 2259 the individual patient, the individual's patient's guardian,
 2260 guardian advocate, health care surrogate or proxy, or
 2261 representative, the state attorney, and the public defender or
 2262 the individual's patient's private counsel. A fee may not be

Page 78 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2263 charged for filing a petition under this subsection.

2264 (4) APPOINTMENT OF COUNSEL.—Within 1 court working day
 2265 after ~~the~~ filing of a petition for involuntary outpatient
 2266 placement, the court shall appoint the public defender to
 2267 represent the individual ~~person~~ who is the subject of the
 2268 petition, unless the individual ~~person~~ is otherwise represented
 2269 by counsel. The clerk of the court shall immediately notify the
 2270 public defender of the appointment. The public defender shall
 2271 represent the individual ~~person~~ until the petition is dismissed,
 2272 the court order expires, or the individual ~~patient~~ is discharged
 2273 from involuntary outpatient placement. An attorney who
 2274 represents the individual ~~patient~~ shall have access to the
 2275 individual ~~patient~~, witnesses, and records relevant to the
 2276 presentation of the individual's ~~patient's~~ case and shall
 2277 represent the interests of the individual ~~patient~~, regardless of
 2278 the source of payment to the attorney. An attorney representing
 2279 an individual in proceedings under this part shall advocate the
 2280 individual's expressed desires and must be present and actively
 2281 participate in all hearings on involuntary placement. If the
 2282 individual is unable or unwilling to express his or her desires
 2283 to the attorney, the attorney shall proceed as though the
 2284 individual expressed a desire for liberty, opposition to
 2285 involuntary placement and, if placement is ordered, a preference
 2286 for the least restrictive treatment possible.

2287 (5) CONTINUANCE OF HEARING.—The patient is entitled, with
 2288 the concurrence of the patient's counsel, to at least one
 2289 continuance of the hearing. The continuance shall be for a
 2290 period of up to 4 weeks.

2291 (6) HEARING ON INVOLUNTARY OUTPATIENT PLACEMENT.—

Page 79 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2292 (a)~~1~~— The court shall hold the hearing on involuntary
 2293 outpatient placement within 5 court working days after the
 2294 filing of the petition, unless a continuance is granted. The
 2295 hearing shall be held in the county where the petition is filed,
 2296 ~~shall~~ be as convenient to the individual who is the subject of
 2297 the petition ~~patient~~ as is consistent with orderly procedure,
 2298 and ~~shall~~ be conducted in physical settings not likely to be
 2299 injurious to the individual's ~~patient's~~ condition. If the court
 2300 finds that the individual's ~~patient's~~ attendance at the hearing
 2301 is not consistent with the best interests of the individual
 2302 ~~patient~~ and if the individual's ~~patient's~~ counsel does not
 2303 object, the court may waive the presence of the individual
 2304 ~~patient~~ from all or any portion of the hearing. The state
 2305 attorney for the circuit in which the individual ~~patient~~ is
 2306 located shall represent the state, rather than the petitioner,
 2307 as the real party in interest in the proceeding. The state
 2308 attorney shall have access to the individual's clinical record
 2309 and witnesses and shall independently evaluate and confirm the
 2310 allegations set forth in the petition for involuntary placement.
 2311 If the allegations are substantiated, the state attorney shall
 2312 prosecute the petition. If the allegations are not
 2313 substantiated, the state attorney shall withdraw the petition.

2314 (b)~~2~~— The court may appoint a magistrate ~~master~~ to preside
 2315 at the hearing. One of the professionals who executed the
 2316 involuntary outpatient placement certificate shall be a witness.
 2317 The individual who is the subject of the petition ~~patient~~ and
 2318 his or her ~~the patient's~~ guardian, guardian advocate, health
 2319 care surrogate or proxy, or representative shall be informed by
 2320 the court of the right to an independent expert examination. If

Page 80 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2321 the individual patient cannot afford such an examination, the
 2322 court shall provide ~~for~~ one. The independent expert's report is
 2323 ~~shall be~~ confidential and not discoverable, unless the expert is
 2324 ~~to be~~ called as a witness for the individual patient at the
 2325 hearing. The court shall allow testimony from persons
 2326 ~~individuals~~, including family members, deemed by the court to be
 2327 relevant ~~under state law~~, regarding the individual's person's
 2328 prior history and how that ~~prior~~ history relates to the
 2329 individual's person's current condition. The testimony in the
 2330 hearing must be ~~given~~ under oath, and the proceedings must be
 2331 recorded. The individual patient may refuse to testify at the
 2332 hearing.

2333 (c) The court shall consider testimony and evidence
 2334 regarding the competence of the individual being held to consent
 2335 to treatment. If the court finds that the individual is
 2336 incompetent to consent, it shall appoint a guardian advocate as
 2337 provided in s. 394.4598.

2338 (7) COURT ORDER.-

2339 (a) ~~(b) 1-~~ If the court concludes that the individual who is
 2340 the subject of the petition patient meets the criteria for
 2341 involuntary outpatient placement under ~~pursuant to~~ subsection
 2342 (1), the court shall issue an order for involuntary outpatient
 2343 placement. The court order ~~may shall~~ be for a ~~period of~~ up to 6
 2344 months. The order must specify the nature and extent of the
 2345 individual's patient's mental illness or substance abuse
 2346 impairment. The ~~court order of the court~~ and the treatment plan
 2347 ~~must shall~~ be made part of the individual's patient's clinical
 2348 record. The service provider shall discharge an individual a
 2349 ~~patient~~ from involuntary outpatient placement when the order

Page 81 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2350 expires or any time the individual patient no longer meets the
 2351 criteria for involuntary placement. Upon discharge, the service
 2352 provider shall send a certificate of discharge to the court.

2353 (b) 2- The court may not order the department or the service
 2354 provider to provide services if the program or service is not
 2355 available in the ~~patient's~~ local community of the individual
 2356 being served, if there is no space available in the program or
 2357 service for the individual patient, or if funding is not
 2358 available for the program or service. A copy of the order must
 2359 be sent to the Agency for Health Care Administration by the
 2360 service provider within 1 working day after it is received from
 2361 the court. After the placement order is issued, the service
 2362 provider and the individual patient may modify ~~provisions of~~ the
 2363 treatment plan. For any material modification of the treatment
 2364 plan to which the individual patient or the individual's
 2365 ~~patient's~~ guardian advocate, if appointed, does agree, the
 2366 service provider shall send notice of the modification to the
 2367 court. Any material modifications of the treatment plan which
 2368 are contested by the individual patient or the individual's
 2369 ~~patient's~~ guardian advocate, if appointed, must be approved or
 2370 disapproved by the court consistent with the requirements of
 2371 subsection (2).

2372 (c) 3- If, in the clinical judgment of a physician, the
 2373 individual being served patient has failed or has refused to
 2374 comply with the treatment ordered by the court, and, in the
 2375 clinical judgment of the physician, efforts were made to solicit
 2376 compliance and the individual patient may meet the criteria for
 2377 involuntary examination, the individual a person may be brought
 2378 to a receiving facility pursuant to s. 394.463 for involuntary

Page 82 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__
 2379 examination. If, after examination, the individual patient does
 2380 not meet the criteria for involuntary inpatient placement
 2381 pursuant to s. 394.467, the individual patient must be
 2382 discharged from the receiving facility. The involuntary
 2383 outpatient placement order remains ~~shall remain~~ in effect unless
 2384 the service provider determines that the individual patient no
 2385 longer meets the criteria for involuntary outpatient placement
 2386 or until the order expires. The service provider must determine
 2387 whether modifications should be made to the existing treatment
 2388 plan and must attempt to continue to engage the individual
 2389 ~~patient~~ in treatment. For any material modification of the
 2390 treatment plan to which the individual patient or the
 2391 individual's patient's guardian advocate, if appointed, agrees
 2392 ~~does agree~~, the service provider shall send notice of the
 2393 modification to the court. Any material modifications of the
 2394 treatment plan which are contested by the individual patient or
 2395 the individual's patient's guardian advocate, if appointed, must
 2396 be approved or disapproved by the court consistent with the
 2397 requirements of subsection (2).

2398 (d)(e) If, at any time before the conclusion of the initial
 2399 hearing on involuntary outpatient placement, it appears to the
 2400 court that the individual person does not meet the criteria for
 2401 involuntary outpatient placement under this section but,
 2402 ~~instead~~, meets the criteria for involuntary inpatient placement,
 2403 the court may order the individual person admitted for
 2404 involuntary inpatient examination under s. 394.463. ~~If the~~
 2405 ~~person instead meets the criteria for involuntary assessment,~~
 2406 ~~protective custody, or involuntary admission pursuant to s.~~
 2407 ~~397.675, the court may order the person to be admitted for~~

576-02889-15 20157070__
 2408 ~~involuntary assessment for a period of 5 days pursuant to s.~~
 2409 ~~397.6811. Thereafter, all proceedings shall be governed by~~
 2410 ~~chapter 397.~~
 2411 ~~(d) At the hearing on involuntary outpatient placement, the~~
 2412 ~~court shall consider testimony and evidence regarding the~~
 2413 ~~patient's competence to consent to treatment. If the court finds~~
 2414 ~~that the patient is incompetent to consent to treatment, it~~
 2415 ~~shall appoint a guardian advocate as provided in s. 394.4598.~~
 2416 ~~The guardian advocate shall be appointed or discharged in~~
 2417 ~~accordance with s. 394.4598.~~
 2418 (e) The administrator of the receiving facility, the
 2419 detoxification facility, or the designated department
 2420 representative shall provide a copy of the court order and
 2421 adequate documentation of an individual's a patient's mental
 2422 illness or substance abuse impairment to the service provider
 2423 for involuntary outpatient placement. Such documentation must
 2424 include any advance directives made by the individual patient, a
 2425 psychiatric evaluation of the individual patient, and any
 2426 evaluations of the individual patient performed by a ~~clinical~~
 2427 psychologist or a clinical social worker.
 2428 ~~(8)(7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT~~
 2429 ~~PLACEMENT.-~~
 2430 (a) ~~1-~~ If the individual person continues to meet the
 2431 criteria for involuntary outpatient placement, the service
 2432 provider shall, before the expiration of the period during which
 2433 the placement treatment is ordered ~~for the person~~, file in the
 2434 circuit court a petition for continued involuntary outpatient
 2435 placement.
 2436 1.2- The existing involuntary outpatient placement order

576-02889-15

20157070__

2437 remains in effect until disposition of ~~en~~ the petition for
2438 continued involuntary outpatient placement.

2439 ~~2.3-~~ A certificate ~~must shall~~ be attached to the petition
2440 which includes a statement from the individual's person's
2441 physician or ~~clinical~~ psychologist justifying the request, a
2442 brief description of the individual's patient's treatment during
2443 the time he or she was involuntarily placed, and a personalized
2444 ~~an individualized~~ plan of continued treatment.

2445 ~~3.4-~~ The service provider shall develop the ~~individualized~~
2446 plan of continued treatment in consultation with the individual
2447 ~~patient~~ or his or her ~~the patient's~~ guardian advocate, if
2448 appointed. When the petition has been filed, the clerk of the
2449 court shall provide copies of the certificate and the
2450 ~~individualized~~ plan of continued treatment to the department,
2451 the individual patient, the individual's patient's guardian
2452 advocate, the state attorney, and the individual's patient's
2453 private counsel or the public defender.

2454 (b) Within 1 court working day after the filing of a
2455 petition for continued involuntary outpatient placement, the
2456 court shall appoint the public defender to represent the
2457 individual person who is the subject of the petition, unless the
2458 individual person is otherwise represented by counsel. The clerk
2459 of the court shall immediately notify the public defender of
2460 such appointment. The public defender shall represent the
2461 individual person until the petition is dismissed, ~~or~~ the court
2462 order expires, ~~or~~ the individual patient is discharged from
2463 involuntary outpatient placement. Any attorney representing the
2464 individual patient shall have access to the individual patient,
2465 witnesses, and records relevant to the presentation of the

Page 85 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2466 individual's patient's case and shall represent the interests of
2467 the individual patient, regardless of the source of payment to
2468 the attorney.

2469 (c) The court shall inform the individual who is the
2470 subject of the petition and his or her guardian, guardian
2471 advocate, health care surrogate or proxy, or representative of
2472 the individual's right to an independent expert examination. If
2473 the individual cannot afford such an examination, the court
2474 shall provide one.

2475 (d)(e) Hearings on petitions for continued involuntary
2476 outpatient placement are shall be before the circuit court. The
2477 court may appoint a magistrate master to preside at the hearing.
2478 The procedures for obtaining an order pursuant to this paragraph
2479 must shall be in accordance with subsection (6), except that the
2480 time period included in paragraph (1) (e) is not applicable in
2481 determining the appropriateness of additional periods of
2482 involuntary outpatient placement.

2483 (e)(d) Notice of the hearing shall be provided in
2484 accordance with as set forth in s. 394.4599. The individual
2485 being served patient and the individual's patient's attorney may
2486 agree to a period of continued outpatient placement without a
2487 court hearing.

2488 (f)(e) The same procedure shall be repeated before the
2489 expiration of each additional period the individual being served
2490 patient is placed in treatment.

2491 (g)(f) If the individual in involuntary outpatient
2492 placement patient has previously been found incompetent to
2493 consent to treatment, the court shall consider testimony and
2494 evidence regarding the individual's patient's competence.

Page 86 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__

2495 Section 394.4598 governs the discharge of the guardian advocate
 2496 if the individual's patient's competency to consent to treatment
 2497 has been restored.

2498 Section 14. Section 394.467, Florida Statutes, is amended
 2499 to read:

2500 394.467 Involuntary inpatient placement.—

2501 (1) CRITERIA.—~~An individual A person~~ may be placed in
 2502 involuntary inpatient placement for treatment upon a finding of
 2503 the court by clear and convincing evidence that:

2504 (a) He or she has a mental illness or substance abuse
 2505 impairment is mentally ill and because of his or her mental
 2506 illness or substance abuse impairment:

2507 1.a. He or she has refused voluntary placement for
 2508 treatment after sufficient and conscientious explanation and
 2509 disclosure of the purpose of placement for treatment; or

2510 b. He or she is unable to determine for himself or herself
 2511 whether placement is necessary; and

2512 2.a. He or she is manifestly incapable of surviving alone
 2513 or with the help of willing and responsible family or friends,
 2514 including available alternative services, and, without
 2515 treatment, is likely to suffer from neglect or refuse to care
 2516 for himself or herself, and such neglect or refusal poses a real
 2517 and present threat of substantial harm to his or her well-being;
 2518 or

2519 b. There is substantial likelihood that in the near future
 2520 he or she will inflict serious bodily harm on self or others
 2521 ~~himself or herself or another person~~, as evidenced by recent
 2522 behavior causing, attempting, or threatening such harm; and

2523 (b) All available less restrictive treatment alternatives

576-02889-15 20157070__

2524 ~~that which would~~ offer an opportunity for improvement of his or
 2525 her condition have been judged to be inappropriate.

2526 (2) ADMISSION TO A TREATMENT FACILITY.—~~An individual A~~
 2527 ~~patient~~ may be retained by a mental health receiving facility,
 2528 an addictions receiving facility, or a detoxification facility,
 2529 or involuntarily placed in a treatment facility upon the
 2530 recommendation of the administrator of the receiving facility
 2531 where the individual patient has been examined and after
 2532 adherence to the notice and hearing procedures provided in s.
 2533 394.4599. The recommendation must be supported by the opinion of
 2534 a psychiatrist and the second opinion of a ~~clinical~~ psychologist
 2535 or another psychiatrist, both of whom have personally examined
 2536 the individual patient within the preceding 72 hours, that the
 2537 criteria for involuntary inpatient placement are met. However,
 2538 in a county that has a population of fewer than 50,000, if the
 2539 administrator certifies that a psychiatrist or ~~clinical~~
 2540 psychologist is not available to provide the second opinion, the
 2541 second opinion may be provided by a licensed physician who has
 2542 postgraduate training and experience in diagnosis and treatment
 2543 of mental and nervous disorders or by a psychiatric nurse. If
 2544 the petition seeks placement for treatment of substance abuse
 2545 impairment only, and the individual is examined by an addictions
 2546 receiving facility or detoxification facility, the first opinion
 2547 may be provided by a physician and the second opinion may be
 2548 provided by a substance abuse qualified professional. Any second
 2549 opinion authorized in this subsection may be conducted through a
 2550 face-to-face examination, in person or by electronic means. Such
 2551 recommendation must shall be entered on an involuntary inpatient
 2552 placement certificate that authorizes the receiving facility to

576-02889-15

20157070__

2553 retain the individual being held ~~patient~~ pending transfer to a
2554 treatment facility or completion of a hearing.

2555 (3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.—The
2556 administrator of the mental health facility, addictions
2557 receiving facility, or detoxification facility shall file a
2558 petition for involuntary inpatient placement in the court in the
2559 county where the individual patient is located. Upon filing, the
2560 clerk of the court shall provide copies to the department, the
2561 individual patient, the individual's patient's guardian,
2562 guardian advocate, health care surrogate or proxy, or
2563 representative, and the state attorney and public defender of
2564 the judicial circuit in which the individual patient is located.
2565 A No fee may not shall be charged for the filing of a petition
2566 under this subsection.

2567 (4) APPOINTMENT OF COUNSEL.—Within 1 court working day
2568 after the filing of a petition for involuntary inpatient
2569 placement, the court shall appoint the public defender to
2570 represent the individual person who is the subject of the
2571 petition, unless the individual person is otherwise represented
2572 by counsel. The clerk of the court shall immediately notify the
2573 public defender of such appointment. Any attorney representing
2574 the individual patient shall have access to the individual
2575 patient, witnesses, and records relevant to the presentation of
2576 the individual's patient's case and shall represent the
2577 interests of the individual patient, regardless of the source of
2578 payment to the attorney.

2579 (a) An attorney representing an individual in proceedings
2580 under this part shall advocate the individual's expressed
2581 desires and must be present and actively participate in all

Page 89 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2582 hearings on involuntary placement. If the individual is unable
2583 or unwilling to express his or her desires to the attorney, the
2584 attorney shall proceed as though the individual expressed a
2585 desire for liberty, opposition to involuntary placement, and, if
2586 placement is ordered, a preference for the least restrictive
2587 treatment possible.

2588 (b) The state attorney for the circuit in which the
2589 individual is located shall represent the state rather than the
2590 petitioning facility administrator as the real party in interest
2591 in the proceeding. The state attorney shall have access to the
2592 individual's clinical record and witnesses and shall
2593 independently evaluate and confirm the allegations set forth in
2594 the petition for involuntary placement. If the allegations are
2595 substantiated, the state attorney shall prosecute the petition.
2596 If the allegations are not substantiated, the state attorney
2597 shall withdraw the petition.

2598 (5) CONTINUANCE OF HEARING.—The individual patient is
2599 entitled, with the concurrence of the individual's patient's
2600 counsel, to at least one continuance of the hearing. The
2601 continuance shall be for ~~a period of~~ up to 4 weeks.

2602 (6) HEARING ON INVOLUNTARY INPATIENT PLACEMENT.—

2603 (a) ~~1.~~ The court shall hold the hearing on involuntary
2604 inpatient placement within 5 court working days after the
2605 petition is filed, unless a continuance is granted.

2606 1. The hearing shall be held in the county where the
2607 individual patient is located and shall be as convenient to the
2608 individual patient as may be consistent with orderly procedure
2609 and shall be conducted in physical settings not likely to be
2610 injurious to the individual's patient's condition. If the

Page 90 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2611 ~~individual wishes to waive his or her court finds that the~~
 2612 ~~patient's attendance at the hearing, the court must determine~~
 2613 ~~that the waiver is knowingly, intelligently, and voluntarily~~
 2614 ~~being waived and is not consistent with the best interests of~~
 2615 ~~the patient, and the patient's counsel does not object, the~~
 2616 ~~court~~ may waive the presence of the individual patient from all
 2617 or any portion of the hearing. ~~The state attorney for the~~
 2618 ~~district in which the patient is located shall represent the~~
 2619 ~~state, rather than the petitioning facility administrator, as~~
 2620 ~~the real party in interest in the proceeding.~~

2621 2. The court may appoint a general or special magistrate to
 2622 preside at the hearing. One of the two professionals who
 2623 executed the involuntary inpatient placement certificate shall
 2624 be a witness. The individual patient and the individual's
 2625 patient's guardian, guardian advocate, health care surrogate or
 2626 proxy, or representative shall be informed by the court of the
 2627 right to an independent expert examination. If the individual
 2628 ~~patient~~ cannot afford such an examination, the court shall
 2629 provide for one. The independent expert's report ~~is~~ shall be
 2630 confidential and not discoverable, unless the expert is to be
 2631 called as a witness for the individual patient at the hearing.
 2632 The testimony in the hearing must be given under oath, and the
 2633 proceedings must be recorded. The individual patient may refuse
 2634 to testify at the hearing.

2635 3. The court shall allow testimony from persons, including
 2636 family members, deemed by the court to be relevant regarding the
 2637 individual's prior history and how that prior history relates to
 2638 the individual's current condition.

2639 (b) If the court concludes that the individual patient

576-02889-15

20157070__

2640 meets the criteria for involuntary inpatient placement, it shall
 2641 order that the individual patient be transferred to a treatment
 2642 facility or, if the individual patient is at a treatment
 2643 facility, that the individual patient be retained there or be
 2644 treated at any other appropriate mental health receiving
 2645 facility, addictions receiving facility, detoxification
 2646 facility, or treatment facility, or that the individual patient
 2647 receive services from such a facility a receiving or treatment
 2648 ~~facility~~, on an involuntary basis, for up to 90 days a period of
 2649 ~~up to 6 months~~. The order shall specify the nature and extent of
 2650 the individual's patient's mental illness or substance abuse
 2651 impairment. The facility shall discharge the individual at a
 2652 patient any time the individual patient no longer meets the
 2653 criteria for involuntary inpatient placement, unless the
 2654 individual patient has transferred to voluntary status.

2655 (c) If at any time before prior to the conclusion of the
 2656 hearing on involuntary inpatient placement it appears to the
 2657 court that the individual person does not meet the criteria for
 2658 involuntary inpatient placement under this section, but instead
 2659 meets the criteria for involuntary outpatient placement, the
 2660 court may order the individual person evaluated for involuntary
 2661 outpatient placement pursuant to s. 394.4655, ~~and~~ the petition
 2662 and hearing procedures set forth in s. 394.4655 ~~shall~~ apply. ~~If~~
 2663 ~~the person instead meets the criteria for involuntary~~
 2664 ~~assessment, protective custody, or involuntary admission~~
 2665 ~~pursuant to s. 397.675, then the court may order the person to~~
 2666 ~~be admitted for involuntary assessment for a period of 5 days~~
 2667 ~~pursuant to s. 397.6811. Thereafter, all proceedings shall be~~
 2668 ~~governed by chapter 397.~~

576-02889-15

20157070__

2669 (d) At the hearing on involuntary inpatient placement, the
 2670 court shall consider testimony and evidence regarding the
 2671 individual's patient's competence to consent to treatment. If
 2672 the court finds that the individual patient is incompetent to
 2673 consent to treatment, it shall appoint a guardian advocate as
 2674 provided in s. 394.4598.

2675 (e) The administrator of the petitioning receiving facility
 2676 shall provide a copy of the court order and adequate
 2677 documentation of the individual's a-patient's mental illness or
 2678 substance abuse impairment to the administrator of a treatment
 2679 facility if the individual ~~whenever a patient~~ is ordered for
 2680 involuntary inpatient placement, whether by civil or criminal
 2681 court. The documentation must shall include any advance
 2682 directives made by the individual patient, a psychiatric
 2683 evaluation of the individual patient, and any evaluations of the
 2684 individual patient performed by a clinical psychologist, a
 2685 marriage and family therapist, a mental health counselor, a
 2686 substance abuse qualified professional or a clinical social
 2687 worker. The administrator of a treatment facility may refuse
 2688 admission to an individual ~~any patient~~ directed to its
 2689 facilities on an involuntary basis, whether by civil or criminal
 2690 court order, who is not accompanied at the same time by adequate
 2691 orders and documentation.

2692 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
 2693 PLACEMENT.—

2694 (a) Hearings on petitions for continued involuntary
 2695 inpatient placement shall be administrative hearings and shall
 2696 be conducted in accordance with ~~the provisions of~~ s. 120.57(1),
 2697 except that an any order entered by an the administrative law

Page 93 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2698 judge is shall be final and subject to judicial review in
 2699 accordance with s. 120.68. Orders concerning an individual
 2700 ~~patients~~ committed after successfully pleading not guilty by
 2701 reason of insanity are shall be governed by ~~the provisions of~~ s.
 2702 916.15.

2703 (b) If the individual patient continues to meet the
 2704 criteria for involuntary inpatient placement, the administrator
 2705 shall, before prior to the expiration of the period during which
 2706 the ~~treatment~~ facility is authorized to retain the individual
 2707 ~~patient~~, file a petition requesting authorization for continued
 2708 involuntary inpatient placement. The request must shall be
 2709 accompanied by a statement from the individual's patient's
 2710 physician or clinical psychologist justifying the request, a
 2711 brief description of the individual's patient's treatment during
 2712 the time he or she was involuntarily placed, and a personalized
 2713 ~~an individualized~~ plan of continued treatment. Notice of the
 2714 hearing must shall be provided as set forth in s. 394.4599. If
 2715 at the hearing the administrative law judge finds that
 2716 attendance at the hearing is not consistent with the
 2717 individual's best interests of the patient, the administrative
 2718 law judge may waive the presence of the individual patient from
 2719 all or any portion of the hearing, unless the individual
 2720 ~~patient~~, through counsel, objects to the waiver of presence. The
 2721 testimony in the hearing must be under oath, and the proceedings
 2722 must be recorded.

2723 (c) Unless the individual patient is otherwise represented
 2724 or is ineligible, he or she shall be represented at the hearing
 2725 on the petition for continued involuntary inpatient placement by
 2726 the public defender of the circuit in which the facility is

Page 94 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__

2727 located.

2728 (d) The Division of Administrative Hearings shall inform
 2729 the individual and his or her guardian, guardian advocate,
 2730 health care surrogate or proxy, or representative of the right
 2731 to an independent expert examination. If the individual cannot
 2732 afford such an examination, the court shall provide one.

2733 (e)(d) If at a hearing it is shown that the individual
 2734 patient continues to meet the criteria for involuntary inpatient
 2735 placement, the administrative law judge shall sign the order for
 2736 continued involuntary inpatient placement for a period of up to
 2737 90 days not to exceed 6 months. The same procedure must shall be
 2738 repeated prior to the expiration of each additional period the
 2739 individual patient is retained.

2740 (f)(e) If continued involuntary inpatient placement is
 2741 necessary for an individual a patient admitted while serving a
 2742 criminal sentence, but whose sentence is about to expire, or for
 2743 a minor patient involuntarily placed while a minor but who is
 2744 about to reach the age of 18, the administrator shall petition
 2745 the administrative law judge for an order authorizing continued
 2746 involuntary inpatient placement.

2747 (g)(f) If the individual previously patient has been
 2748 previously found incompetent to consent to treatment, the
 2749 administrative law judge shall consider testimony and evidence
 2750 regarding the individual's patient's competence. If the
 2751 administrative law judge finds evidence that the individual
 2752 patient is now competent to consent to treatment, the
 2753 administrative law judge may issue a recommended order to the
 2754 court that found the individual patient incompetent to consent
 2755 to treatment that the individual's patient's competence be

Page 95 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__

2756 restored and that any guardian advocate previously appointed be
 2757 discharged.

2758 (8) RETURN TO FACILITY OF PATIENTS.—If an individual held
 2759 ~~When a patient at a treatment facility involuntarily under this~~
 2760 part leaves the facility without the administrator's
 2761 authorization, the administrator may authorize a search for, the
 2762 patient and the return of, the individual patient to the
 2763 facility. The administrator may request the assistance of a law
 2764 enforcement agency in the search for and return of the patient.

2765 Section 15. Section 394.4672, Florida Statutes, is amended
 2766 to read:

2767 394.4672 Procedure for placement of veteran with federal
 2768 agency.—

2769 (1) A facility owned, operated, or administered by the
 2770 United States Department of Veterans Affairs that provides
 2771 mental health services has authority as granted by the
 2772 Department of Veterans' Affairs to:

2773 (a) Initiate and conduct involuntary examinations pursuant
 2774 to s. 394.463.

2775 (b) Provide voluntary treatment pursuant to s. 394.4625.

2776 (c) Petition for involuntary inpatient placement pursuant
 2777 to s. 394.467.

2778 (d) Provide involuntary inpatient placement pursuant to
 2779 this part.

2780 (2)(1) ~~If a~~ Whenever it is determined by the court
 2781 determines that an individual a person meets the criteria for
 2782 involuntary placement and he or she it appears that such person
 2783 is eligible for care or treatment by the United States
 2784 Department of Veterans Affairs or another other agency of the

Page 96 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2785 United States Government, the court, upon receipt of a
 2786 certificate from the United States Department of Veterans
 2787 Affairs or such other agency showing that facilities are
 2788 available and that the individual person is eligible for care or
 2789 treatment therein, may place that individual person with the
 2790 United States Department of Veterans Affairs or other federal
 2791 agency. The individual person whose placement is sought shall be
 2792 personally served with notice of the pending placement
 2793 proceeding in the manner as provided in this part, ~~and nothing~~
 2794 ~~in~~ This section does not shall affect the individual's his or
 2795 ~~her~~ right to appear and be heard in the proceeding. Upon
 2796 placement, the individual is person shall be subject to the
 2797 rules and regulations of the United States Department of
 2798 Veterans Affairs or other federal agency.

2799 (3)(2) The judgment or order of placement issued by a court
 2800 of competent jurisdiction of another state or of the District of
 2801 Columbia which places an individual, placing a person with the
 2802 United States Department of Veterans Affairs or other federal
 2803 agency for care or treatment has, shall have the same force and
 2804 effect in this state as in the jurisdiction of the court
 2805 entering the judgment or making the order, ~~and~~ The courts of
 2806 the placing state or of the District of Columbia shall retain be
 2807 ~~deemed to have retained~~ jurisdiction of the individual person so
 2808 placed. Consent is hereby given to the application of the law of
 2809 the placing state or district with respect to the authority of
 2810 the chief officer of any facility of the United States
 2811 Department of Veterans Affairs or other federal agency operated
 2812 in this state to retain custody or to transfer, parole, or
 2813 discharge the individual person.

Page 97 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2814 (4)(3) Upon receipt of a certificate of the United States
 2815 Department of Veterans Affairs or another such other federal
 2816 agency that facilities are available for the care or treatment
 2817 of individuals who have mental illness or substance abuse
 2818 impairment mentally ill persons and that an individual the
 2819 person is eligible for that care or treatment, the administrator
 2820 of the receiving or treatment facility may ~~cause the transfer of~~
 2821 that individual person to the United States Department of
 2822 Veterans Affairs or other federal agency. Upon ~~effecting~~ such
 2823 transfer, the committing court shall be notified by the
 2824 transferring agency. An individual may not ~~No person shall~~ be
 2825 transferred to the United States Department of Veterans Affairs
 2826 ~~or other federal agency~~ if he or she is confined pursuant to the
 2827 conviction of any felony or misdemeanor or if he or she has been
 2828 acquitted of the charge solely on the ground of insanity, unless
 2829 prior to transfer the court placing the individual such person
 2830 enters an order for the transfer after appropriate motion and
 2831 hearing and without objection by the United States Department of
 2832 Veterans Affairs.

2833 (5)(4) An individual ~~Any person~~ transferred as provided in
 2834 this section ~~is shall~~ be deemed to be placed with the United
 2835 States Department of Veterans Affairs or other federal agency
 2836 pursuant to the original placement.

2837 Section 16. Paragraph (a) of subsection (1) of section
 2838 394.875, Florida Statutes, is amended to read:

2839 394.875 Crisis stabilization units, residential treatment
 2840 facilities, and residential treatment centers for children and
 2841 adolescents; authorized services; license required.—

2842 (1) (a) The purpose of a crisis stabilization unit is to

Page 98 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__

2843 stabilize and redirect a client to the most appropriate and
 2844 least restrictive community setting available, consistent with
 2845 the client's needs. Crisis stabilization units may screen,
 2846 assess, and admit for stabilization persons who present
 2847 themselves to the unit and persons who are brought to the unit
 2848 under s. 394.463. Clients may be provided 24-hour observation,
 2849 medication prescribed by a physician or psychiatrist, and other
 2850 appropriate services. Crisis stabilization units shall provide
 2851 services regardless of the client's ability to pay ~~and shall be~~
 2852 ~~limited in size to a maximum of 30 beds.~~

2853 Section 17. Section 765.401, Florida Statutes, is
 2854 transferred and renumbered as section 765.311, Florida Statutes.

2855 Section 18. Section 765.404, Florida Statutes, is
 2856 transferred and renumbered as section 765.312, Florida Statutes.

2857 Section 19. The Division of Law Revision and Information is
 2858 directed to rename part IV of chapter 765, Florida Statutes, as
 2859 "Mental Health and Substance Abuse Advance Directives."

2860 Section 20. Section 765.4015, Florida Statutes, is created
 2861 to read:

2862 765.4015 Short title.—Sections 765.402–765.411 may be cited
 2863 as the "Jennifer Act."

2864 Section 21. Section 765.402, Florida Statutes, is created
 2865 to read:

2866 765.402 Legislative findings.—

2867 (1) The Legislature recognizes that an individual with
 2868 capacity has the ability to control decisions relating to his or
 2869 her own mental health care or substance abuse treatment. The
 2870 Legislature finds that:

2871 (a) Substance abuse and some mental illnesses cause

576-02889-15 20157070__

2872 individuals to fluctuate between capacity and incapacity;

2873 (b) During periods when an individual's capacity is
 2874 unclear, the individual may be unable to provide informed
 2875 consent necessary to access needed treatment;

2876 (c) Early treatment may prevent an individual from becoming
 2877 so ill that involuntary treatment is necessary; and

2878 (d) Individuals with substance abuse impairment or mental
 2879 illness need an established procedure to express their
 2880 instructions and preferences for treatment and provide advance
 2881 consent to or refusal of treatment. This procedure should be
 2882 less expensive and less restrictive than guardianship.

2883 (2) The Legislature further recognizes that:

2884 (a) A mental health or substance abuse treatment advance
 2885 directive must provide the individual with a full range of
 2886 choices.

2887 (b) For a mental health or substance abuse directive to be
 2888 an effective tool, individuals must be able to choose how they
 2889 want their directives to be applied, including the right of
 2890 revocation, during periods when they are incompetent to consent
 2891 to treatment.

2892 (c) There must be a clear process so that treatment
 2893 providers can abide by an individual's treatment choices.

2894 Section 22. Section 765.403, Florida Statutes, is created
 2895 to read:

2896 765.403 Definitions.—As used in this section, the term:

2897 (1) "Adult" means any individual who has attained the age
 2898 of majority or is an emancipated minor.

2899 (2) "Capacity" means that an adult has not been found to be
 2900 incapacitated pursuant to s. 394.463.

576-02889-15

20157070__

2901 (3) "Health care facility" means a hospital, nursing home,
 2902 hospice, home health agency, or health maintenance organization
 2903 licensed in this state, or any facility subject to part I of
 2904 chapter 394.

2905 (4) "Incapacity" or "incompetent" means an adult who is:
 2906 (a) Unable to understand the nature, character, and
 2907 anticipated results of proposed treatment or alternatives or the
 2908 recognized serious possible risks, complications, and
 2909 anticipated benefits of treatments and alternatives, including
 2910 nontreatment;

2911 (b) Physically or mentally unable to communicate a willful
 2912 and knowing decision about mental health care or substance abuse
 2913 treatment;

2914 (c) Unable to communicate his or her understanding or
 2915 treatment decisions; or

2916 (d) Determined incompetent pursuant to s. 394.463.

2917 (5) "Informed consent" means consent voluntarily given by a
 2918 person after a sufficient explanation and disclosure of the
 2919 subject matter involved to enable that person to have a general
 2920 understanding of the treatment or procedure and the medically
 2921 acceptable alternatives, including the substantial risks and
 2922 hazards inherent in the proposed treatment or procedures or
 2923 nontreatment, and to make knowing mental health care or
 2924 substance abuse treatment decisions without coercion or undue
 2925 influence.

2926 (6) "Interested person" means, for the purposes of this
 2927 chapter, any person who may reasonably be expected to be
 2928 affected by the outcome of the particular proceeding involved,
 2929 including anyone interested in the welfare of an incapacitated

Page 101 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

2930 person.

2931 (7) "Mental health or substance abuse treatment advance
 2932 directive" means a written document in which the principal makes
 2933 a declaration of instructions or preferences or appoints a
 2934 surrogate to make decisions on behalf of the principal regarding
 2935 the principal's mental health or substance abuse treatment, or
 2936 both.

2937 (8) "Mental health professional" means a psychiatrist,
 2938 psychologist, psychiatric nurse, or social worker, and such
 2939 other mental health professionals licensed pursuant to chapter
 2940 458, chapter 464, chapter 490, or chapter 491.

2941 (9) "Principal" means a competent adult who executes a
 2942 mental health or substance abuse treatment advance directive and
 2943 on whose behalf mental health care or substance abuse treatment
 2944 decisions are to be made.

2945 (10) "Surrogate" means any competent adult expressly
 2946 designated by a principal to make mental health care or
 2947 substance abuse treatment decisions on behalf of the principal
 2948 as set forth in the principal's mental health or substance abuse
 2949 treatment advance directive or self-binding arrangement as those
 2950 terms are defined in this part.

2951 Section 23. Section 765.405, Florida Statutes, is created
 2952 to read:

2953 765.405 Mental health or substance abuse treatment advance
 2954 directive; execution; allowable provisions.—

2955 (1) An adult with capacity may execute a mental health or
 2956 substance abuse treatment advance directive.

2957 (2) A directive executed in accordance with this section is
 2958 presumed to be valid. The inability to honor one or more

Page 102 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__

2959 provisions of a directive does not affect the validity of the
2960 remaining provisions.

2961 (3) A directive may include any provision relating to
2962 mental health or substance abuse treatment or the care of the
2963 principal. Without limitation, a directive may include:

2964 (a) The principal's preferences and instructions for mental
2965 health or substance abuse treatment.

2966 (b) Consent to specific types of mental health or substance
2967 abuse treatment.

2968 (c) Refusal to consent to specific types of mental health
2969 or substance abuse treatment.

2970 (d) Descriptions of situations that may cause the principal
2971 to experience a mental health or substance abuse crisis.

2972 (e) Suggested alternative responses that may supplement or
2973 be in lieu of direct mental health or substance abuse treatment,
2974 such as treatment approaches from other providers.

2975 (f) The principal's nomination of a guardian, limited
2976 guardian, or guardian advocate as provided chapter 744.

2977 (4) A directive may be combined with or be independent of a
2978 nomination of a guardian, other durable power of attorney, or
2979 other advance directive.

2980 Section 24. Section 765.406, Florida Statutes, is created
2981 to read:

2982 765.406 Execution of a mental health or substance abuse
2983 advance directive; effective date; expiration.—

2984 (1) A directive must:

2985 (a) Be in writing.

2986 (b) Contain language that clearly indicates that the
2987 principal intends to create a directive.

576-02889-15 20157070__

2988 (c) Be dated and signed by the principal or, if the
2989 principal is unable to sign, at the principal's direction in the
2990 principal's presence.

2991 (d) Be witnessed by two adults, each of whom must declare
2992 that he or she personally knows the principal and was present
2993 when the principal dated and signed the directive, and that the
2994 principal did not appear to be incapacitated or acting under
2995 fraud, undue influence, or duress. The person designated as the
2996 surrogate may not act as a witness to the execution of the
2997 document designating the mental health or substance abuse care
2998 treatment surrogate. At least one person who acts as a witness
2999 must be neither the principal's spouse nor his or her blood
3000 relative.

3001 (2) A directive is valid upon execution, but all or part of
3002 the directive may take effect at a later date as designated by
3003 the principal in the directive.

3004 (3) A directive may:

3005 (a) Be revoked, in whole or in part, pursuant to s.
3006 765.407; or

3007 (b) Expire under its own terms.

3008 (4) A directive does not or may not:

3009 (a) Create an entitlement to mental health, substance
3010 abuse, or medical treatment or supersede a determination of
3011 medical necessity.

3012 (b) Obligate any health care provider, professional person,
3013 or health care facility to pay the costs associated with the
3014 treatment requested.

3015 (c) Obligate a health care provider, professional person,
3016 or health care facility to be responsible for the nontreatment

576-02889-15 20157070__

3017 or personal care of the principal or the principal's personal
 3018 affairs outside the scope of services the facility normally
 3019 provides.

3020 (d) Replace or supersede any will or testamentary document
 3021 or supersede the provision of intestate succession.

3022 (e) Be revoked by an incapacitated principal unless that
 3023 principal selected the option to permit revocation while
 3024 incapacitated at the time his or her directive was executed.

3025 Section 25. Section 765.407, Florida Statutes, is created
 3026 to read:

3027 765.407 Revocation; waiver.-

3028 (1) A principal with capacity may, by written statement of
 3029 the principal or at the principal's direction in the principal's
 3030 presence, revoke a directive in whole or in part.

3031 (2) The principal shall provide a copy of his or her
 3032 written statement of revocation to his or her agent, if any, and
 3033 to each health care provider, professional person, or health
 3034 care facility that received a copy of the directive from the
 3035 principal.

3036 (3) The written statement of revocation is effective as to
 3037 a health care provider, professional person, or health care
 3038 facility upon receipt. The professional person, health care
 3039 provider, or health care facility, or persons acting under their
 3040 direction, shall make the statement of revocation part of the
 3041 principal's medical record.

3042 (4) A directive also may:

3043 (a) Be revoked, in whole or in part, expressly or to the
 3044 extent of any inconsistency, by a subsequent directive; or

3045 (b) Be superseded or revoked by a court order, including

576-02889-15 20157070__

3046 any order entered in a criminal matter. The individual's family,
 3047 the health care facility, the attending physician, or any other
 3048 interested person who may be directly affected by the
 3049 surrogate's decision concerning any health care may seek
 3050 expedited judicial intervention pursuant to rule 5.900 of the
 3051 Florida Probate Rules, if that person believes:

3052 1. The surrogate's decision is not in accord with the
 3053 individual's known desires;

3054 2. The advance directive is ambiguous, or the individual
 3055 has changed his or her mind after execution of the advance
 3056 directive;

3057 3. The surrogate was improperly designated or appointed, or
 3058 the designation of the surrogate is no longer effective or has
 3059 been revoked;

3060 4. The surrogate has failed to discharge duties, or
 3061 incapacity or illness renders the surrogate incapable of
 3062 discharging duties;

3063 5. The surrogate has abused powers; or

3064 6. The individual has sufficient capacity to make his or
 3065 her own health care decisions.

3066 (5) A directive that would have otherwise expired but is
 3067 effective because the principal is incapacitated remains
 3068 effective until the principal is no longer incapacitated unless
 3069 the principal elected to be able to revoke while incapacitated
 3070 and has revoked the directive.

3071 (6) When a principal with capacity consents to treatment
 3072 that differs from, or refuses treatment consented to in, his or
 3073 her directive, the consent or refusal constitutes a waiver of a
 3074 particular provision and does not constitute a revocation of the

576-02889-15 20157070__

3075 provision or the directive unless that principal also revokes
3076 the provision or directive.

3077 Section 26. Section 765.410, Florida Statutes, is created
3078 to read:

3079 765.410 Immunity from liability; weight of proof;
3080 presumption.—

3081 (1) A health care facility, provider, or other person who
3082 acts under the direction of a health care facility or provider
3083 is not subject to criminal prosecution or civil liability, and
3084 may not be deemed to have engaged in unprofessional conduct, as
3085 a result of carrying out a mental health care or substance abuse
3086 treatment decision made in accordance with this section. The
3087 surrogate who makes a mental health care or substance abuse
3088 treatment decision on a principal's behalf, pursuant to this
3089 section, is not subject to criminal prosecution or civil
3090 liability for such action.

3091 (2) This section applies unless it is shown by a
3092 preponderance of the evidence that the person authorizing or
3093 carrying out a mental health or substance abuse treatment
3094 decision did not, in good faith, comply with this section.

3095 Section 27. Section 765.411, Florida Statutes, is created
3096 to read:

3097 765.411 Recognition of mental health and substance abuse
3098 treatment advance directive executed in another state.—A mental
3099 health or substance abuse treatment advance directive executed
3100 in another state in compliance with the law of that state is
3101 validly executed for the purposes of this chapter.

3102 Section 28. Section 916.185, Florida Statutes, is created
3103 to read:

576-02889-15 20157070__

3104 916.185 Forensic Hospital Diversion Pilot Program.—

3105 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
3106 that many jail inmates who have serious mental illnesses and who
3107 are committed to state forensic mental health treatment
3108 facilities for restoration of competency to proceed could be
3109 served more effectively and at less cost in community-based
3110 alternative programs. The Legislature further finds that many
3111 individuals who have serious mental illnesses and who have been
3112 discharged from state forensic mental health treatment
3113 facilities could avoid recidivism in the criminal justice and
3114 forensic mental health systems if they received specialized
3115 treatment in the community. Therefore, it is the intent of the
3116 Legislature to create the Forensic Hospital Diversion Pilot
3117 Program to serve individuals who have mental illnesses or co-
3118 occurring mental illnesses and substance use disorders and who
3119 are admitted to or are at risk of entering state forensic mental
3120 health treatment facilities, prisons, jails, or state civil
3121 mental health treatment facilities.

3122 (2) DEFINITIONS.—As used in this section, the term:

3123 (a) "Best practices" means treatment services that
3124 incorporate the most effective and acceptable interventions
3125 available in the care and treatment of individuals who are
3126 diagnosed as having mental illnesses or co-occurring mental
3127 illnesses and substance use disorders.

3128 (b) "Community forensic system" means the community mental
3129 health and substance use forensic treatment system, including
3130 the comprehensive set of services and supports provided to
3131 individuals involved in or at risk of becoming involved in the
3132 criminal justice system.

576-02889-15

20157070__

3133 (c) "Evidence-based practices" means interventions and
 3134 strategies that, based on the best available empirical research,
 3135 demonstrate effective and efficient outcomes in the care and
 3136 treatment of individuals who are diagnosed as having mental
 3137 illnesses or co-occurring mental illnesses and substance use
 3138 disorders.

3139 (3) CREATION.—There is created a Forensic Hospital
 3140 Diversion Pilot Program to provide, when appropriate,
 3141 competency-restoration and community-reintegration services in
 3142 locked residential treatment facilities, based on considerations
 3143 of public safety, the needs of the individual, and available
 3144 resources.

3145 (a) The department shall implement a Forensic Hospital
 3146 Diversion Pilot Program in Alachua, Escambia, Hillsborough, and
 3147 Miami-Dade Counties, in conjunction with the Eighth Judicial
 3148 Circuit, the First Judicial Circuit, the Thirteenth Judicial
 3149 Circuit, and the Eleventh Judicial Circuit, respectively, which
 3150 shall be modeled after the Miami-Dade Forensic Alternative
 3151 Center, taking into account local needs and subject to the
 3152 availability of local resources.

3153 (b) In creating and implementing the program, the
 3154 department shall include a comprehensive continuum of care and
 3155 services which uses evidence-based practices and best practices
 3156 to treat individuals who have mental health and co-occurring
 3157 substance use disorders.

3158 (c) The department and the respective judicial circuits
 3159 shall implement this section within available resources. State
 3160 funding may be made available through a specific appropriation.

3161 (4) ELIGIBILITY.—Participation in the Forensic Hospital

Page 109 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

3162 Diversion Pilot Program is limited to individuals who:

3163 (a) Are 18 years of age or older;

3164 (b) Are charged with a felony of the second degree or a
 3165 felony of the third degree;

3166 (c) Do not have a significant history of violent criminal
 3167 offenses;

3168 (d) Have been adjudicated incompetent to proceed to trial
 3169 or not guilty by reason of insanity under this part;

3170 (e) Meet public safety and treatment criteria established
 3171 by the department for placement in a community setting; and

3172 (f) Would be admitted to a state mental health treatment
 3173 facility if not for the availability of the Forensic Hospital
 3174 Diversion Pilot Program.

3175 (5) TRAINING.—The Legislature encourages the Florida
 3176 Supreme Court, in consultation and cooperation with the Task
 3177 Force on Substance Abuse and Mental Health Issues in the Courts,
 3178 to develop educational training on the community forensic system
 3179 for judges in the pilot program areas.

3180 (6) RULEMAKING.—The department may adopt rules to
 3181 administer this section.

3182 (7) REPORT.—The Office of Program Policy Analysis and
 3183 Government Accountability shall review and evaluate the Forensic
 3184 Hospital Diversion Pilot Program and submit a report to the
 3185 Governor, the President of the Senate, and the Speaker of the
 3186 House of Representatives by December 31, 2016. The report shall
 3187 examine the efficiency and cost-effectiveness of providing
 3188 forensic mental health services in secure, outpatient,
 3189 community-based settings. In addition, the report shall examine
 3190 the impact of the Forensic Hospital Diversion Pilot Program on

Page 110 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

3191 public health and safety.3192 Section 29. Paragraph (a) of subsection (3) of section
3193 39.407, Florida Statutes, is amended to read:3194 39.407 Medical, psychiatric, and psychological examination
3195 and treatment of child; physical, mental, or substance abuse
3196 examination of person with or requesting child custody.—3197 (3) (a) 1. Except as otherwise provided in subparagraph (b) 1.
3198 or paragraph (e), before the department provides psychotropic
3199 medications to a child in its custody, the prescribing physician
3200 shall attempt to obtain express and informed consent, as defined
3201 in s. 394.455(13) ~~s. 394.455(9)~~ and as described in s.3202 394.459(3) (a), from the child's parent or legal guardian. The
3203 department must take steps necessary to facilitate the inclusion
3204 of the parent in the child's consultation with the physician.3205 However, if the parental rights of the parent have been
3206 terminated, the parent's location or identity is unknown or
3207 cannot reasonably be ascertained, or the parent declines to give
3208 express and informed consent, the department may, after
3209 consultation with the prescribing physician, seek court
3210 authorization to provide the psychotropic medications to the
3211 child. Unless parental rights have been terminated and if it is
3212 possible to do so, the department shall continue to involve the
3213 parent in the decisionmaking process regarding the provision of
3214 psychotropic medications. If, at any time, a parent whose
3215 parental rights have not been terminated provides express and
3216 informed consent to the provision of a psychotropic medication,
3217 the requirements of this section that the department seek court
3218 authorization do not apply to that medication until such time as
3219 the parent no longer consents.

Page 111 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

3220 2. Any time the department seeks a medical evaluation to
3221 determine the need to initiate or continue a psychotropic
3222 medication for a child, the department must provide to the
3223 evaluating physician all pertinent medical information known to
3224 the department concerning that child.3225 Section 30. Subsection (2) of section 394.4612, Florida
3226 Statutes, is amended to read:3227 394.4612 Integrated adult mental health crisis
3228 stabilization and addictions receiving facilities.—3229 (2) An integrated mental health crisis stabilization unit
3230 and addictions receiving facility may provide services under
3231 this section to adults who are 18 years of age or older and who
3232 fall into one or more of the following categories:3233 (a) An adult meeting the requirements for voluntary
3234 admission for mental health treatment under s. 394.4625.3235 (b) An adult meeting the criteria for involuntary
3236 examination for mental illness under s. 394.463.3237 ~~(c) An adult qualifying for voluntary admission for~~
3238 ~~substance abuse treatment under s. 397.601.~~3239 ~~(d) An adult meeting the criteria for involuntary admission~~
3240 ~~for substance abuse impairment under s. 397.675.~~3241 Section 31. Paragraphs (a) and (c) of subsection (3) of
3242 section 394.495, Florida Statutes, are amended to read:3243 394.495 Child and adolescent mental health system of care;
3244 programs and services.—

3245 (3) Assessments must be performed by:

3246 (a) A professional as defined in s. 394.455(6), (31), (34),
3247 (35), or (36) ~~s. 394.455(2), (4), (21), (23), or (24);~~

3248 (c) A person who is under the direct supervision of a

Page 112 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__

3249 professional as defined in s. 394.455(6), (31), (34), (35), or
 3250 (36) s. 394.455(2), (4), (21), (23), or (24) or a professional
 3251 licensed under chapter 491.

3252

3253 The department shall adopt by rule statewide standards for
 3254 mental health assessments, which must be based on current
 3255 relevant professional and accreditation standards.

3256 Section 32. Subsection (6) of section 394.496, Florida
 3257 Statutes, is amended to read:

3258 394.496 Service planning.—

3259 (6) A professional as defined in s. 394.455(6), (31), (34),
 3260 (35), or (36) s. 394.455(2), (4), (21), (23), or (24) or a
 3261 professional licensed under chapter 491 must be included among
 3262 those persons developing the services plan.

3263 Section 33. Subsection (2) of section 394.499, Florida
 3264 Statutes, is amended to read:

3265 394.499 Integrated children's crisis stabilization
 3266 unit/juvenile addictions receiving facility services.—

3267 (2) Children eligible to receive integrated children's
 3268 crisis stabilization unit/juvenile addictions receiving facility
 3269 services include:

3270 (a) A person under 18 years of age for whom voluntary
 3271 application is made by his or her guardian, if such person is
 3272 found to show evidence of mental illness and to be suitable for
 3273 treatment pursuant to s. 394.4625. A person under 18 years of
 3274 age may be admitted for integrated facility services only after
 3275 a hearing to verify that the consent to admission is voluntary.

3276 (b) A person under 18 years of age who may be taken to a
 3277 receiving facility for involuntary examination, if there is

576-02889-15 20157070__

3278 reason to believe that he or she is mentally ill and because of
 3279 his or her mental illness, pursuant to s. 394.463:

3280 1. Has refused voluntary examination after conscientious
 3281 explanation and disclosure of the purpose of the examination; or

3282 2. Is unable to determine for himself or herself whether
 3283 examination is necessary; and

3284 a. Without care or treatment is likely to suffer from
 3285 neglect or refuse to care for himself or herself; such neglect
 3286 or refusal poses a real and present threat of substantial harm
 3287 to his or her well-being; and it is not apparent that such harm
 3288 may be avoided through the help of willing family members or
 3289 friends or the provision of other services; or

3290 b. There is a substantial likelihood that without care or
 3291 treatment he or she will cause serious bodily harm to himself or
 3292 herself or others in the near future, as evidenced by recent
 3293 behavior.

3294 ~~(c) A person under 18 years of age who wishes to enter~~
 3295 ~~treatment for substance abuse and applies to a service provider~~
 3296 ~~for voluntary admission, pursuant to s. 397.601.~~

3297 ~~(d) A person under 18 years of age who meets the criteria~~
 3298 ~~for involuntary admission because there is good faith reason to~~
 3299 ~~believe the person is substance abuse impaired pursuant to s.~~
 3300 ~~397.675 and, because of such impairment:~~

3301 1. ~~Has lost the power of self-control with respect to~~
 3302 ~~substance use; and~~

3303 2.a. ~~Has inflicted, or threatened or attempted to inflict,~~
 3304 ~~or unless admitted is likely to inflict, physical harm on~~
 3305 ~~himself or herself or another; or~~

3306 b. ~~Is in need of substance abuse services and, by reason of~~

576-02889-15

20157070__

3307 ~~substance abuse impairment, his or her judgment has been so~~
 3308 ~~impaired that the person is incapable of appreciating his or her~~
 3309 ~~need for such services and of making a rational decision in~~
 3310 ~~regard thereto; however, mere refusal to receive such services~~
 3311 ~~does not constitute evidence of lack of judgment with respect to~~
 3312 ~~his or her need for such services.~~

3313 (c)~~(e)~~ A person under 18 years of age who meets the
 3314 criteria for examination or admission under paragraph (b) ~~or~~
 3315 ~~paragraph (d)~~ and has a coexisting mental health and substance
 3316 abuse disorder.

3317 Section 34. Subsection (18) of section 394.67, Florida
 3318 Statutes, is amended to read:

3319 394.67 Definitions.—As used in this part, the term:

3320 (18) "Person who is experiencing an acute substance abuse
 3321 crisis" means a child, adolescent, or adult who is experiencing
 3322 a medical or emotional crisis because of the use of alcoholic
 3323 beverages or any psychoactive or mood-altering substance. ~~The~~
 3324 ~~term includes an individual who meets the criteria for~~
 3325 ~~involuntary admission specified in s. 397.675.~~

3326 Section 35. Subsection (2) of section 394.674, Florida
 3327 Statutes, is amended to read:

3328 394.674 Eligibility for publicly funded substance abuse and
 3329 mental health services; fee collection requirements.—

3330 (2) Crisis services, as defined in s. 394.67, must, within
 3331 the limitations of available state and local matching resources,
 3332 be available to each person who is eligible for services under
 3333 subsection (1), regardless of the person's ability to pay for
 3334 such services. A person who is experiencing a mental health
 3335 crisis and who does not meet the criteria for involuntary

576-02889-15

20157070__

3336 examination under s. 394.463(1), ~~or a person who is experiencing~~
 3337 ~~a substance abuse crisis and who does not meet the involuntary~~
 3338 ~~admission criteria in s. 397.675,~~ must contribute to the cost of
 3339 his or her care and treatment pursuant to the sliding fee scale
 3340 developed under subsection (4), unless charging a fee is
 3341 contraindicated because of the crisis situation.

3342 Section 36. Subsection (6) of section 394.9085, Florida
 3343 Statutes, is amended to read:

3344 394.9085 Behavioral provider liability.—

3345 (6) For purposes of this section, the terms "detoxification
 3346 services," "addictions receiving facility," and "receiving
 3347 facility" have the same meanings as those provided in ss.
 3348 397.311(18) (a)4., 397.311(18) (a)1., and 394.455(27) ~~394.455(26)~~,
 3349 respectively.

3350 Section 37. Paragraph (d) of subsection (1) of section
 3351 395.0197, Florida Statutes, is amended to read:

3352 395.0197 Internal risk management program.—

3353 (1) Every licensed facility shall, as a part of its
 3354 administrative functions, establish an internal risk management
 3355 program that includes all of the following components:

3356 (d) A system for informing a patient or an individual
 3357 identified pursuant to s. 765.311(1) ~~s. 765.401(1)~~ that the
 3358 patient was the subject of an adverse incident, as defined in
 3359 subsection (5). Such notice shall be given by an appropriately
 3360 trained person designated by the licensed facility as soon as
 3361 practicable to allow the patient an opportunity to minimize
 3362 damage or injury.

3363 Section 38. Section 395.1051, Florida Statutes, is amended
 3364 to read:

576-02889-15

20157070__

3365 395.1051 Duty to notify patients.—An appropriately trained
 3366 person designated by each licensed facility shall inform each
 3367 patient, or an individual identified pursuant to s. 765.311(1)
 3368 ~~s. 765.401(1)~~, in person about adverse incidents that result in
 3369 serious harm to the patient. Notification of outcomes of care
 3370 that result in harm to the patient under this section shall not
 3371 constitute an acknowledgment or admission of liability, nor can
 3372 it be introduced as evidence.

3373 Section 39. Subsection (11) and paragraph (a) of subsection
 3374 (18) of section 397.311, Florida Statutes, are amended to read:

3375 397.311 Definitions.—As used in this chapter, except part
 3376 VIII, the term:

3377 (11) "Habitual abuser" means a person who is brought to the
 3378 attention of law enforcement for being substance impaired, ~~who~~
 3379 ~~meets the criteria for involuntary admission in s. 397.675,~~ and
 3380 who has been taken into custody for such impairment three or
 3381 more times during the preceding 12 months.

3382 (18) Licensed service components include a comprehensive
 3383 continuum of accessible and quality substance abuse prevention,
 3384 intervention, and clinical treatment services, including the
 3385 following services:

3386 (a) "Clinical treatment" means a professionally directed,
 3387 deliberate, and planned regimen of services and interventions
 3388 that are designed to reduce or eliminate the misuse of drugs and
 3389 alcohol and promote a healthy, drug-free lifestyle. As defined
 3390 by rule, "clinical treatment services" include, but are not
 3391 limited to, the following licensable service components:

3392 1. "Addictions receiving facility" is a secure, acute care
 3393 facility that provides, at a minimum, detoxification and

Page 117 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

3394 stabilization services and is operated 24 hours per day, 7 days
 3395 per week; and is designated by the department to serve
 3396 individuals found to be substance use impaired ~~as described in~~
 3397 ~~s. 397.675~~ who meet the placement criteria for this component.

3398 2. "Day or night treatment" is a service provided in a
 3399 nonresidential environment, with a structured schedule of
 3400 treatment and rehabilitative services.

3401 3. "Day or night treatment with community housing" means a
 3402 program intended for individuals who can benefit from living
 3403 independently in peer community housing while participating in
 3404 treatment services for a minimum of 5 hours a day for a minimum
 3405 of 25 hours per week.

3406 4. "Detoxification" is a service involving subacute care
 3407 that is provided on an inpatient or an outpatient basis to
 3408 assist individuals to withdraw from the physiological and
 3409 psychological effects of substance abuse and who meet the
 3410 placement criteria for this component.

3411 5. "Intensive inpatient treatment" includes a planned
 3412 regimen of evaluation, observation, medical monitoring, and
 3413 clinical protocols delivered through an interdisciplinary team
 3414 approach provided 24-hours-per-day ~~24 hours per day,~~ 7-days-per-
 3415 week ~~7 days per week,~~ in a highly structured, live-in
 3416 environment.

3417 6. "Intensive outpatient treatment" is a service that
 3418 provides individual or group counseling in a more structured
 3419 environment, is of higher intensity and duration than outpatient
 3420 treatment, and is provided to individuals who meet the placement
 3421 criteria for this component.

3422 7. "Medication-assisted treatment for opiate addiction" is

Page 118 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__

3423 a service that uses methadone or other medication as authorized
3424 by state and federal law, in combination with medical,
3425 rehabilitative, and counseling services in the treatment of
3426 individuals who are dependent on opioid drugs.

3427 8. "Outpatient treatment" is a service that provides
3428 individual, group, or family counseling by appointment during
3429 scheduled operating hours for individuals who meet the placement
3430 criteria for this component.

3431 9. "Residential treatment" is a service provided in a
3432 structured live-in environment within a nonhospital setting on a
3433 24-hours-per-day, 7-days-per-week basis, and is intended for
3434 individuals who meet the placement criteria for this component.

3435 Section 40. Subsection (3) of section 397.431, Florida
3436 Statutes, is amended to read:

3437 397.431 Individual responsibility for cost of substance
3438 abuse impairment services.—

3439 (3) The parent, legal guardian, or legal custodian of a
3440 minor is not liable for payment for any substance abuse services
3441 provided to the minor without parental consent ~~pursuant to s.~~
3442 ~~397.601(4)~~, unless the parent, legal guardian, or legal
3443 custodian participates or is ordered to participate in the
3444 services, and only for the substance abuse services rendered. If
3445 the minor is receiving services as a juvenile offender, the
3446 obligation to pay is governed by the law relating to juvenile
3447 offenders.

3448 Section 41. Paragraph (b) of subsection (2) of section
3449 397.702, Florida Statutes, is amended to read:

3450 397.702 Authorization of local ordinances for treatment of
3451 habitual abusers in licensed secure facilities.—

Page 119 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__

3452 (2) Ordinances for the treatment of habitual abusers must
3453 provide:

3454 (b) That when seeking treatment of a habitual abuser, the
3455 county or municipality, through an officer or agent specified in
3456 the ordinance, must file with the court a petition which alleges
3457 the following information about the alleged habitual abuser (the
3458 respondent):

3459 1. The name, address, age, and gender of the respondent.

3460 2. The name of any spouse, adult child, other relative, or
3461 guardian of the respondent, if known to the petitioner, and the
3462 efforts, if any, by the petitioner, ~~if any~~, to ascertain this
3463 information.

3464 3. The name of the petitioner, the name of the person who
3465 has physical custody of the respondent, and the current location
3466 of the respondent.

3467 4. That the respondent has been taken into custody for
3468 impairment in a public place, or has been arrested for an
3469 offense committed while impaired, three or more times during the
3470 preceding 12 months.

3471 ~~5. Specific facts indicating that the respondent meets the~~
3472 ~~criteria for involuntary admission in s. 397.675.~~

3473 5.6. Whether the respondent was advised of his or her right
3474 to be represented by counsel and to request that the court
3475 appoint an attorney if he or she is unable to afford one, and
3476 whether the respondent indicated to petitioner his or her desire
3477 to have an attorney appointed.

3478 Section 42. Paragraph (a) of subsection (1) of section
3479 397.94, Florida Statutes, is amended to read:

3480 397.94 Children's substance abuse services; information and

Page 120 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

3481 referral network.—

3482 (1) The substate entity shall determine the most cost-
 3483 effective method for delivering this service and may select a
 3484 new provider or utilize an existing provider or providers with a
 3485 record of success in providing information and referral
 3486 services.

3487 (a) The plan must provide assurances that the information
 3488 and referral network will include a resource directory that
 3489 contains information regarding the children's substance abuse
 3490 services available, including, but not limited to:

3491 ~~1. Public and private resources by service component,~~
 3492 ~~including resources for involuntary admissions under s. 397.675.~~
 3493 1.2. Hours of operation and hours during which services are
 3494 provided.

3495 2.3. Ages of persons served.

3496 3.4. Description of services.

3497 4.5. Eligibility requirements.

3498 5.6. Fee schedules.

3499 Section 43. Section 402.3057, Florida Statutes, is amended
 3500 to read:

3501 402.3057 Persons not required to be refingerprinted or
 3502 rescreened.—Any provision of law to the contrary
 3503 notwithstanding, human resource personnel who have been
 3504 fingerprinted or screened pursuant to chapters 393, 394, 397,
 3505 402, and 409, and teachers and noninstructional personnel who
 3506 have been fingerprinted pursuant to chapter 1012, who have not
 3507 been unemployed for more than 90 days thereafter, and who under
 3508 the penalty of perjury attest to the completion of such
 3509 fingerprinting or screening and to compliance with the

Page 121 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

3510 provisions of this section and the standards for good moral
 3511 character as contained in such provisions as ss. 110.1127(2)(c),
 3512 393.0655(1), ~~394.457(6)~~, 397.451, 402.305(2), and 409.175(6),
 3513 shall not be required to be refingerprinted or rescreened in
 3514 order to comply with any caretaker screening or fingerprinting
 3515 requirements.

3516 Section 44. Section 409.1757, Florida Statutes, is amended
 3517 to read:

3518 409.1757 Persons not required to be refingerprinted or
 3519 rescreened.—Any law to the contrary notwithstanding, human
 3520 resource personnel who have been fingerprinted or screened
 3521 pursuant to chapters 393, 394, 397, 402, and this chapter,
 3522 teachers who have been fingerprinted pursuant to chapter 1012,
 3523 and law enforcement officers who meet the requirements of s.
 3524 943.13, who have not been unemployed for more than 90 days
 3525 thereafter, and who under the penalty of perjury attest to the
 3526 completion of such fingerprinting or screening and to compliance
 3527 with this section and the standards for good moral character as
 3528 contained in such provisions as ss. 110.1127(2)(c), 393.0655(1),
 3529 ~~394.457(6)~~, 397.451, 402.305(2), 409.175(6), and 943.13(7), are
 3530 not required to be refingerprinted or rescreened in order to
 3531 comply with any caretaker screening or fingerprinting
 3532 requirements.

3533 Section 45. Paragraph (b) of subsection (1) of section
 3534 409.972, Florida Statutes, is amended to read:

3535 409.972 Mandatory and voluntary enrollment.—

3536 (1) The following Medicaid-eligible persons are exempt from
 3537 mandatory managed care enrollment required by s. 409.965, and
 3538 may voluntarily choose to participate in the managed medical

Page 122 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

3539 assistance program:

3540 (b) Medicaid recipients residing in residential commitment
 3541 facilities operated through the Department of Juvenile Justice
 3542 or mental health treatment facilities as defined by s.
 3543 394.455(47) ~~s. 394.455(32)~~.

3544 Section 46. Section 456.0575, Florida Statutes, is amended
 3545 to read:

3546 456.0575 Duty to notify patients.—Every licensed health
 3547 care practitioner shall inform each patient, or an individual
 3548 identified pursuant to s. 765.311(1) ~~s. 765.401(1)~~, in person
 3549 about adverse incidents that result in serious harm to the
 3550 patient. Notification of outcomes of care that result in harm to
 3551 the patient under this section shall not constitute an
 3552 acknowledgment of admission of liability, nor can such
 3553 notifications be introduced as evidence.

3554 Section 47. Subsection (7) of section 744.704, Florida
 3555 Statutes, is amended to read:

3556 744.704 Powers and duties.—

3557 (7) A public guardian shall not commit a ward to a mental
 3558 health treatment facility, as defined in s. 394.455(47) ~~s.~~
 3559 ~~394.455(32)~~, without an involuntary placement proceeding as
 3560 provided by law.

3561 Section 48. Subsection (15) of section 765.101, Florida
 3562 Statutes, is amended to read:

3563 765.101 Definitions.—As used in this chapter:

3564 (15) "Proxy" means a competent adult who has not been
 3565 expressly designated to make health care decisions for a
 3566 particular incapacitated individual, but who, nevertheless, is
 3567 authorized pursuant to s. 765.311 ~~s. 765.401~~ to make health care

Page 123 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

3568 decisions for such individual.

3569 Section 49. Subsection (4) of section 765.104, Florida
 3570 Statutes, is amended to read:

3571 765.104 Amendment or revocation.—

3572 (4) Any patient for whom a medical proxy has been
 3573 recognized under s. 765.311 ~~s. 765.401~~ and for whom any previous
 3574 legal disability that precluded the patient's ability to consent
 3575 is removed may amend or revoke the recognition of the medical
 3576 proxy and any uncompleted decision made by that proxy. The
 3577 amendment or revocation takes effect when it is communicated to
 3578 the proxy, the health care provider, or the health care facility
 3579 in writing or, if communicated orally, in the presence of a
 3580 third person.

3581 Section 50. Paragraph (a) of subsection (2) of section
 3582 790.065, Florida Statutes, is amended to read:

3583 790.065 Sale and delivery of firearms.—

3584 (2) Upon receipt of a request for a criminal history record
 3585 check, the Department of Law Enforcement shall, during the
 3586 licensee's call or by return call, forthwith:

3587 (a) Review any records available to determine if the
 3588 potential buyer or transferee:

3589 1. Has been convicted of a felony and is prohibited from
 3590 receipt or possession of a firearm pursuant to s. 790.23;

3591 2. Has been convicted of a misdemeanor crime of domestic
 3592 violence, and therefore is prohibited from purchasing a firearm;

3593 3. Has had adjudication of guilt withheld or imposition of
 3594 sentence suspended on any felony or misdemeanor crime of
 3595 domestic violence unless 3 years have elapsed since probation or
 3596 any other conditions set by the court have been fulfilled or

Page 124 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

3597 expunction has occurred; or

3598 4. Has been adjudicated mentally defective or has been
3599 committed to a mental institution by a court or as provided in
3600 sub-sub-subparagraph b. (II), and as a result is prohibited by
3601 state or federal law from purchasing a firearm.

3602 a. As used in this subparagraph, "adjudicated mentally
3603 defective" means a determination by a court that a person, as a
3604 result of marked subnormal intelligence, or mental illness,
3605 incompetency, condition, or disease, is a danger to himself or
3606 herself or to others or lacks the mental capacity to contract or
3607 manage his or her own affairs. The phrase includes a judicial
3608 finding of incapacity under s. 744.331(6) (a), an acquittal by
3609 reason of insanity of a person charged with a criminal offense,
3610 and a judicial finding that a criminal defendant is not
3611 competent to stand trial.

3612 b. As used in this subparagraph, "committed to a mental
3613 institution" means:

3614 (I) Involuntary commitment, commitment for mental
3615 defectiveness or mental illness, and commitment for substance
3616 abuse. The phrase includes involuntary inpatient placement as
3617 defined in s. 394.467, or involuntary outpatient placement as
3618 defined in s. 394.4655, ~~involuntary assessment and stabilization~~
3619 ~~under s. 397.6818, and involuntary substance abuse treatment~~
3620 ~~under s. 397.6957, but does not include a person in a mental~~
3621 institution for observation or discharged from a mental
3622 institution based upon the initial review by the physician or a
3623 voluntary admission to a mental institution; or

3624 (II) Notwithstanding sub-sub-subparagraph (I), voluntary
3625 admission to a mental institution for outpatient or inpatient

Page 125 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

3626 treatment of a person who had an involuntary examination under
3627 s. 394.463, where each of the following conditions have been
3628 met:

3629 (A) An examining physician found that the person is an
3630 imminent danger to himself or herself or others.

3631 (B) The examining physician certified that if the person
3632 did not agree to voluntary treatment, a petition for involuntary
3633 outpatient or inpatient treatment would have been filed under s.
3634 394.463(2)(g) ~~s. 394.463(2)(i)4.~~, or the examining physician
3635 certified that a petition was filed and the person subsequently
3636 agreed to voluntary treatment prior to a court hearing on the
3637 petition.

3638 (C) Before agreeing to voluntary treatment, the person
3639 received written notice of that finding and certification, and
3640 written notice that as a result of such finding, he or she may
3641 be prohibited from purchasing a firearm, and may not be eligible
3642 to apply for or retain a concealed weapon or firearms license
3643 under s. 790.06 and the person acknowledged such notice in
3644 writing, in substantially the following form:

3645
3646 "I understand that the doctor who examined me believes I am
3647 a danger to myself or to others. I understand that if I do not
3648 agree to voluntary treatment, a petition will be filed in court
3649 to require me to receive involuntary treatment. I understand
3650 that if that petition is filed, I have the right to contest it.
3651 In the event a petition has been filed, I understand that I can
3652 subsequently agree to voluntary treatment prior to a court
3653 hearing. I understand that by agreeing to voluntary treatment in
3654 either of these situations, I may be prohibited from buying

Page 126 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__

3655 firearms and from applying for or retaining a concealed weapons
 3656 or firearms license until I apply for and receive relief from
 3657 that restriction under Florida law.”

3658
 3659 (D) A judge or a magistrate has, pursuant to sub-sub-
 3660 subparagraph c.(II), reviewed the record of the finding,
 3661 certification, notice, and written acknowledgment classifying
 3662 the person as an imminent danger to himself or herself or
 3663 others, and ordered that such record be submitted to the
 3664 department.

3665 c. In order to check for these conditions, the department
 3666 shall compile and maintain an automated database of persons who
 3667 are prohibited from purchasing a firearm based on court records
 3668 of adjudications of mental defectiveness or commitments to
 3669 mental institutions.

3670 (I) Except as provided in sub-sub-subparagraph (II), clerks
 3671 of court shall submit these records to the department within 1
 3672 month after the rendition of the adjudication or commitment.
 3673 Reports shall be submitted in an automated format. The reports
 3674 must, at a minimum, include the name, along with any known alias
 3675 or former name, the sex, and the date of birth of the subject.

3676 (II) For persons committed to a mental institution pursuant
 3677 to sub-sub-subparagraph b.(II), within 24 hours after the
 3678 person's agreement to voluntary admission, a record of the
 3679 finding, certification, notice, and written acknowledgment must
 3680 be filed by the administrator of the receiving or treatment
 3681 facility, as defined in s. 394.455, with the clerk of the court
 3682 for the county in which the involuntary examination under s.
 3683 394.463 occurred. No fee shall be charged for the filing under

Page 127 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15 20157070__

3684 this sub-sub-subparagraph. The clerk must present the records to
 3685 a judge or magistrate within 24 hours after receipt of the
 3686 records. A judge or magistrate is required and has the lawful
 3687 authority to review the records ex parte and, if the judge or
 3688 magistrate determines that the record supports the classifying
 3689 of the person as an imminent danger to himself or herself or
 3690 others, to order that the record be submitted to the department.
 3691 If a judge or magistrate orders the submittal of the record to
 3692 the department, the record must be submitted to the department
 3693 within 24 hours.

3694 d. A person who has been adjudicated mentally defective or
 3695 committed to a mental institution, as those terms are defined in
 3696 this paragraph, may petition the circuit court that made the
 3697 adjudication or commitment, or the court that ordered that the
 3698 record be submitted to the department pursuant to sub-sub-
 3699 subparagraph c.(II), for relief from the firearm disabilities
 3700 imposed by such adjudication or commitment. A copy of the
 3701 petition shall be served on the state attorney for the county in
 3702 which the person was adjudicated or committed. The state
 3703 attorney may object to and present evidence relevant to the
 3704 relief sought by the petition. The hearing on the petition may
 3705 be open or closed as the petitioner may choose. The petitioner
 3706 may present evidence and subpoena witnesses to appear at the
 3707 hearing on the petition. The petitioner may confront and cross-
 3708 examine witnesses called by the state attorney. A record of the
 3709 hearing shall be made by a certified court reporter or by court-
 3710 approved electronic means. The court shall make written findings
 3711 of fact and conclusions of law on the issues before it and issue
 3712 a final order. The court shall grant the relief requested in the

Page 128 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

3713 petition if the court finds, based on the evidence presented
 3714 with respect to the petitioner's reputation, the petitioner's
 3715 mental health record and, if applicable, criminal history
 3716 record, the circumstances surrounding the firearm disability,
 3717 and any other evidence in the record, that the petitioner will
 3718 not be likely to act in a manner that is dangerous to public
 3719 safety and that granting the relief would not be contrary to the
 3720 public interest. If the final order denies relief, the
 3721 petitioner may not petition again for relief from firearm
 3722 disabilities until 1 year after the date of the final order. The
 3723 petitioner may seek judicial review of a final order denying
 3724 relief in the district court of appeal having jurisdiction over
 3725 the court that issued the order. The review shall be conducted
 3726 de novo. Relief from a firearm disability granted under this
 3727 sub-subparagraph has no effect on the loss of civil rights,
 3728 including firearm rights, for any reason other than the
 3729 particular adjudication of mental defectiveness or commitment to
 3730 a mental institution from which relief is granted.

3731 e. Upon receipt of proper notice of relief from firearm
 3732 disabilities granted under sub-subparagraph d., the department
 3733 shall delete any mental health record of the person granted
 3734 relief from the automated database of persons who are prohibited
 3735 from purchasing a firearm based on court records of
 3736 adjudications of mental defectiveness or commitments to mental
 3737 institutions.

3738 f. The department is authorized to disclose data collected
 3739 pursuant to this subparagraph to agencies of the Federal
 3740 Government and other states for use exclusively in determining
 3741 the lawfulness of a firearm sale or transfer. The department is

Page 129 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

576-02889-15

20157070__

3742 also authorized to disclose this data to the Department of
 3743 Agriculture and Consumer Services for purposes of determining
 3744 eligibility for issuance of a concealed weapons or concealed
 3745 firearms license and for determining whether a basis exists for
 3746 revoking or suspending a previously issued license pursuant to
 3747 s. 790.06(10). When a potential buyer or transferee appeals a
 3748 nonapproval based on these records, the clerks of court and
 3749 mental institutions shall, upon request by the department,
 3750 provide information to help determine whether the potential
 3751 buyer or transferee is the same person as the subject of the
 3752 record. Photographs and any other data that could confirm or
 3753 negate identity must be made available to the department for
 3754 such purposes, notwithstanding any other provision of state law
 3755 to the contrary. Any such information that is made confidential
 3756 or exempt from disclosure by law shall retain such confidential
 3757 or exempt status when transferred to the department.

3758 Section 51. Part IV of chapter 397, Florida Statutes,
 3759 consisting of s. 397.601, Florida Statutes, is repealed.

3760 Section 52. Part V of chapter 397, Florida Statutes,
 3761 consisting of ss. 397.675-397.6977, Florida Statutes, is
 3762 repealed.

3763 Section 53. This act shall take effect July 1, 2015.

Page 130 of 130

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 238

INTRODUCER: Senator Ring

SUBJECT: Athletic Coaches

DATE: April 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	<u>Procaccini</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting
4.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 238 requires an independent sanctioning authority to dismiss an athletic coach who is ejected from a game in a league of children who are 12 years of age or younger. The dismissal remains in effect at least until the following sport season.

The bill also requires an independent sanctioning authority to establish a process for coaches to appeal an ejection.

II. Present Situation:

Current law defines the term “athletic coach” as a person who is authorized by an independent sanctioning authority to work as a coach, assistant coach, or referee for 20 or more hours within a calendar year, whether for compensation or as a volunteer, for a youth athletic team based in this state and who has direct contact with one or more minors on the youth athletic team.¹

The term “independent sanctioning authority” is defined as a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team in this state if the team includes one or more minors and is not affiliated with a private school as defined in s. 1002.01, F.S.² An independent sanctioning authority is required to do the following:

- Conduct a level 1 background screening pursuant to s. 435.03, F.S., of each current and prospective athletic coach and maintain certain documentation of those screenings for at least 5 years.

¹ Section 943.0438, F.S.

² *Id.*

- Adopt policies related to requirements for parents or guardians of a young athlete to annually sign and return an informed consent that explains the nature and risk of concussion and head injury, including the risk of continuing to play after a concussion or head injury.
- Adopt policies related to continued participation and return to participation by a young athlete who is suspected of sustaining a concussion or head injury.³

The application process to become a coach, assistant coach, or manager, most often uncompensated, for youth athletic organizations, such as a Little League or City Parks and Recreation teams, may involve criminal background checks and interviews, and often include coaching and safety training.⁴ The Little League organizations have established rules for the suspension of their coaches which grant the Little League board of directors the authority to suspend or remove a coach or manager. The board of directors also considers concerns about coaches or managers from parents or anyone else.⁵ Other youth athletic organizations such as Pop Warner and city leagues have also suspended coaches for improper conduct or lack of coaching responsibility.⁶

III. Effect of Proposed Changes:

Section 1 amends s. 943.0438, F.S., to require an independent sanctioning authority to immediately dismiss an athletic coach who has been ejected from a game in a league in which the children are 12 years of age or younger. The dismissed coach may resume work as a coach the following sport season or any time thereafter if the authority determines the coach is still qualified. A procedure for a coach to appeal an ejection is also required to be established by a sanctioning authority.

Section 2 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³ *Id.*

⁴ Little League Softball and Baseball, *Coach's/Manager's Role*, <http://www.littleleague.org/managersandcoaches/coachrole.htm> (Apr. 6, 2015).

⁵ *Id.*

⁶ Gary Mihoces, *Pop Warner investigates, suspends coaches*, USA TODAY, (Oct. 24, 2012) <http://www.usatoday.com/story/sports/2012/10/24/pop-warner-coach-suspensions/1655795/> (This article describes a situation in which two opposing coaches were suspended from their coaching role after five players on the losing team left the field with concussions.).

D. Other Constitutional Issues:

Under existing case law, members of a purely social club have no due process rights prior to expulsion from the club.⁷ However, some due process rights may exist for members of other organizations. An organization may be “held to reasonable standards of due process and fairness” if disciplinary action against a member “may have an import which transcends the organization itself because it conveys to the community that the disciplined member was found lacking by his peers.”⁸ The appellate process provided by the bill likely provides a sufficient amount of due process protections to coaches who are ejected from a game.

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

None.

B. Private Sector Impact:

Because the bill imposes a significant penalty on a coach who is ejected from a game, coaches and sanctioning organizations will likely make use of the procedures to appeal a dismissal from a league. There will likely be costs associated with the appellate process.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.0438, Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

⁷ *McCune v. Wilson*, 237 So. 2d 169 (Fla. 1970).

⁸ *Id.* at 172.

B. Amendments:

None.

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

By Senator Ring

29-00149-15

2015238__

1 A bill to be entitled
 2 An act relating to athletic coaches; amending s.
 3 943.0438, F.S.; requiring an independent sanctioning
 4 authority to dismiss an athletic coach ejected from a
 5 game for the remainder of that sport season under
 6 certain circumstances; authorizing such athletic coach
 7 to resume working under certain circumstances;
 8 requiring an independent sanctioning authority to
 9 establish a procedure for an athletic coach to appeal
 10 certain decisions; providing an effective date.
 11

12 Be It Enacted by the Legislature of the State of Florida:
 13

14 Section 1. Paragraph (h) is added to subsection (2) of
 15 section 943.0438, Florida Statutes, to read:

16 943.0438 Athletic coaches for independent sanctioning
 17 authorities.—

18 (2) An independent sanctioning authority shall:

19 (h) Immediately dismiss an athletic coach who is ejected
 20 from a game in a league of children 12 years of age or younger
 21 for the remainder of the sport season.

22 1. Except as provided in subparagraph 2., the independent
 23 sanctioning authority may allow an athletic coach dismissed
 24 under this paragraph to resume working as an athletic coach for
 25 the league the following sport season or any time thereafter if
 26 the authority determines that the person remains qualified to
 27 work as an athletic coach.

28 2. The independent sanctioning authority must establish a
 29 procedure of due process to ensure that an athletic coach

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

29-00149-15

2015238__

30 ejected from a game in a league of children 12 years of age or
 31 younger has the opportunity to appeal the ejection to the
 32 independent sanctioning authority. The authority shall expedite
 33 the appeal process so that disposition of the appeal can be made
 34 before the end of the applicable sport season, if possible. If
 35 the athletic coach is successful in his or her appeal, the
 36 athletic coach shall be reinstated and allowed to continue
 37 coaching for the remainder of the sport season and thereafter.

38 Section 2. This act shall take effect July 1, 2015.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 748

INTRODUCER: Regulated Industries Committee and Senator Ring

SUBJECT: Residential Properties

DATE: April 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Wiehle</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 748 relates to the governance of condominium, cooperative, and homeowners' associations (residential properties or community associations). The bill provides for the calculation of the documentary stamp tax property in an association that is subject to an assessment.

The bill permits corporations not for profit to use a copy, facsimile, or other reliable reproduction of the original proxy for any purpose for which the original proxy could be used if it is a complete reproduction of the entire proxy. In current law, community associations may be corporations for profit or corporations not for profit.

Regarding condominium associations, the bill permits the association to charge a fee against the unit owners for use of common elements or association property if the fee is authorized by a majority vote of the voting interests present, in person or by proxy, at a meeting of the association in which a quorum has been established. Current law authorizes such a vote but does not specify that it can be by proxy. Currently, the vote must be by vote of the association (majority of the membership). The bill also provides additional events that trigger the transfer of control of a condominium board of administration from a developer to unit owners other than the developer.

The bill provides the duties and rights of bulk-unit purchasers and lender-unit purchasers of condominium units and parcels, and to provide protections for the interests of other lenders, unit owners, and condominium associations.

Regarding condominium, cooperative, and homeowners' associations, the bill provides that association members may not post tape or video recordings of a meeting of the board or a meeting of the membership on any website or other media that can be readily viewed by persons who are not members of the association. The bill prohibits designees of the board and persons who reside with the designee of the board from sitting on the committee charged with reviewing fines and penalties against members of the association. The bill also creates a mechanism for electronic voting in condominium, cooperative, and homeowners' associations.

Regarding condominium associations, the bill permits condominium associations to post meeting notices on association property in addition to condominium property.

Regarding condominium, cooperative, and homeowners' associations, the bill permits associations to recover from the unit owner any reasonable charges imposed upon the association under a written contract with its management, bookkeeping company, or collection agent, incurred in connection with collecting a delinquent assessment. The bill specifies the order in which payments from a homeowner must be applied to his or her unpaid debts. The bill also permits the associations to file a lien on unpaid authorized administrative late fees, and reasonable costs for collection services contracted by the associations.

Regarding homeowners' associations, the bill provides that the board may only levy fines up to \$100, unless otherwise provided in the association's governing documents. It provides that a homeowners' association member who fails to pay a fine may be suspended from the board of directors or barred from running for a seat on the board. It also provides that a homeowners' association's failure to provide notice of the recording of an amendment does not affect the validity or enforceability of the amendment.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Documentary Stamp Tax

Section 201.02(1), F.S., imposes the documentary stamp tax on documents that transfer an interest in Florida real property. The tax is calculated based on the "consideration" of the transfer. Consideration includes money paid or to be paid, the discharge of an obligation, and the amount of any mortgage or other encumbrance. The current tax is \$0.70 for each \$100 of consideration.

Subsections 201.02(6) through (9), F.S., provide exemptions and limitations on the imposition of the documentary stamp tax, including certain judicial sales of real property under a foreclosure order. Currently, there is no exemption or limitation for a transfer in lieu of foreclosure of an assessment lien when the property is transferred to a condominium, cooperative, or homeowners' association, or to a vacation or timeshare plan.

Condominium

A condominium is a “form of ownership of real property created pursuant to [ch. 718, F.S.] which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.”¹ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.² A declaration is like a constitution in that it:

Strictly 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.³

A declaration “may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.”⁴ A declaration of condominium may be amended as provided in the declaration.⁵ If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not fewer than the owners of two-thirds of the units.⁶ Condominiums are administered by a board of directors referred to as a “board of administration.”⁷

Section 718.103(3), F.S., defines the term “association property” to mean:

that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.

Section 718.103(8), F.S., defines the term “common elements” to mean the portions of the condominium property not included in the units.

Section 718.103(13), F.S., defines the term “condominium property” to mean:

the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

Section 718.103(16), F.S., defines a developer as one “who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business” There are two classes of developers: those who create the condominium by executing and recording the condominium documents and those who offer condominium units for sale or lease in the

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

⁴ Section 718.104(5), F.S.

⁵ See s. 718.110(1)(a), F.S.

⁶ Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

⁷ Section 718.103(4), F.S.

ordinary course of business. Current law excludes a bulk assignee and a bulk buyer from the definition of developer.⁸

Condominiums - Insurance

Section 718.111(11)(j), F.S., provides that any portion of the condominium property that is damaged by an insurable event must be repaired or replaced by the association as a common expense. If the damage is not the result of an insurable event, the association or the unit owner is responsible for the repair or replacement, as determined by the declaration or bylaws. All property insurance deductibles, uninsured losses, and other damages in excess of property insurance coverage under the property insurance policies maintained by the association are a common expense of the condominium, except for those losses that are the responsibility of the insured.⁹

Condominium – Assessments and Foreclosures

Section 718.103(1), F.S., defines the term “assessment” to mean “a share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner.”

“Special assessment” is defined to mean “any assessment levied against a unit owner other than the assessment required by a budget adopted annually.”¹⁰

A unit owner is jointly and severally liable with the previous owner for all unpaid assessments that come due up to the time of transfer of title.¹¹ This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.¹²

If a first mortgagee, (e.g., the mortgage lending bank) or its successor or assignee, acquires title to a condominium unit by foreclosure or by deed in lieu of foreclosure, the first mortgagee’s liability for unpaid assessments is limited to the amount of assessments that came due during the 12 months immediately preceding the acquisition of title or one percent of the original mortgage debt, whichever is less.¹³ However, this limitation applies only if the first mortgagee joined the association as a defendant in the foreclosure action.¹⁴ This gives the association the right to defend its claims for unpaid assessments in the foreclosure proceeding. A first mortgagee who acquires title to a foreclosed condominium unit is exempt from liability for all unpaid assessments if the first mortgage was recorded prior to April 1, 1992.¹⁵ The successor or assignee, in respect to the first mortgagee, includes only a subsequent holder of the first mortgage.¹⁶

⁸ See *Distressed Condominium Relief Act* discussion below.

⁹ See s. 718.111(11)(j)1.-4., F.S.

¹⁰ Section 718.103(24), F.S.

¹¹ Section 718.116(1)(a), F.S.

¹² *Id.* The term “without prejudice” means “without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party.” BLACK’S LAW DICTIONARY 770 (2d pocket ed. 2001).

¹³ Section 718.116(1)(b), F.S.

¹⁴ *Id.*

¹⁵ Section 718.116(1)(e), F.S.

¹⁶ Section 718.116(1)(g), F.S.

Section 718.116(3), F.S., provides for the accrual of interest on unpaid assessments. Unpaid assessments and installments on assessments accrue interest at the rate provided in the declaration from the due date until paid. The rate may not exceed the rate allowed by law.¹⁷ If no rate is specified in the declaration, the interest accrues at the rate of 18 percent per year. The association may also charge an administrative late fee of up to the greater of \$25 or 5 percent of each installment of the assessment for each delinquent installment for which the payment is late. Payments are applied first to the interest accrued, then the administrative late fee, then to any reasonable attorney fees incurred in collection, and then to the delinquent assessment.

Section 718.111(4), F.S., permits condominium associations to make and collect assessments and to lease, maintain, repair, and replace the common elements or association property. The association may not charge a use fee against a unit owner for the use of common elements or association property. However, the association may charge a fee against the unit owners for use of common elements or association property if:

- The fee is provided for in the declaration of condominium;
- The fee is authorized by a majority vote of the association; and
- The charges relate to expenses incurred by an owner having exclusive use of the common elements or association property.

Condominiums – Annual Budget and Developer Control

Section 718.112(2)(f)2., F.S., provides that, before the developer has relinquished control of the board to the non-developer unit owners, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e), F.S., or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. After that period, reserves may be waived or reduced only upon the vote of a majority of all non-developer voting interests voting in person or by limited proxy at a duly called meeting of the association.

Condominiums - Transfer of Control

Section 718.301, F.S., requires that the control of a condominium association be turned over to the non-developer unit owners upon the occurrence of specified events, including three years after 50 percent of the units have been conveyed, when some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer, or when the developer files a petition seeking bankruptcy protection.

Condominiums – Agreements Entered into by the Association

Section 718.302, F.S., provides that contracts for the operation, maintenance, or management of a condominium association entered into by a developer and contracts that require the association

¹⁷ Section 687.02(2), F.S., prohibits as usurious interest rates that are higher than the equivalent of 18 percent per annum simple interest.

to purchase condominium property or lease condominium property to another party are subject to cancellation by non-developer unit owners once certain conditions are met.

Distressed Condominium Relief Act

The “Distressed Condominium Relief Act”¹⁸ in part VII of ch. 718, F.S., defines the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties. Enacted in 2010,¹⁹ the act was intended to relieve developers, lenders, unit owners, and condominium associations from specified provisions of ch. 718, F.S., including warranty provisions, in order to enable economic opportunities for successor purchasers of distressed condominiums.²⁰

Section 718.703(1), F.S., defines the term “bulk assignee” to mean a person who acquires more than seven condominium parcels in a single condominium as provided in s. 718.707, F.S., and receives an assignment of some or substantially all of the rights of the developer as an exhibit in the deed, as a separate instrument recorded in the public records in the county where the condominium is located, or pursuant to a final judgment or certificate of title at a foreclosure sale.

Section 718.703(2), F.S., defines the term “bulk buyer” as a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of developer rights other than the rights specified in this section.

Section 718.704(1), F.S., provides that a bulk assignee assumes all the duties and responsibilities of the developer, and specifies obligations for which the bulk assignee is not liable.

Section 718.707, F.S., specifies a time limit for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the parcels are acquired prior to July 1, 2016. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

Condominium Developer Warranties

Section 718.203, F.S., provides that a developer grants an implied warranty of fitness and merchantability as to each unit, improvements, personal property, and other components associated with the sale of a unit.

Cooperative Associations

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

that 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

¹⁸ Sections 718.701 – 718.708, F.S.

¹⁹ Chapter 2010-174, L.O.F.

²⁰ See s. 718.702, F.S.

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.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit's occupants receive an exclusive right to occupy the unit. 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.²¹

Homeowners' Associations

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.²²

A "homeowners' association" is defined as a "Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and 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."²³ Unless specifically stated to the contrary, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.²⁴

Homeowners' associations are administered by a board of directors whose members are elected.²⁵ The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.²⁶ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.²⁷

Homeowners' Associations - Amendments to Governing Documents

Section 720.306(1)(b), F.S., provides that a homeowners' association may amend its governing documents. The process for amendment, and the vote required is generally found in the governing documents. Once adopted, an amendment to the governing documents must be recorded in the public records. Generally, a homeowners' association must furnish each member with a copy of an amendment within 30 days after recording; however, in lieu of providing a copy of the recorded amendment, the association may provide notice to members that the amendment was adopted and identify the book and page number or instrument number of the recorded amendment.

²¹ See ss. 719.106(1)(g) and 719.107, F.S.

²² See s. 720.302(1), F.S.

²³ Section 720.301(9), F.S.

²⁴ Section 720.302(5), F.S.

²⁵ See ss. 720.303 and 720.307, F.S.

²⁶ See ss. 720.301 and 720.303, F.S.

²⁷ Section 720.303(1), F.S.

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums and cooperatives are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) in accordance with ch. 718, F.S., and ch. 719, F.S. The division is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., and ch. 719, F.S., with respect to associations that are still under developer control.²⁸ The division also has the authority to investigate complaints against developers involving improper turnover or failure to turn over control to the association, pursuant to ss. 718.301, F.S., and 719.301, F.S., respectively.²⁹ After control of the condominium or cooperative is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.³⁰

As part of the division's authority to investigate complaints, s. 718.501(1), F.S., and s. 719.501(1), F.S., authorize the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

Chapters 718, 719, and 720, F.S.

Condominiums and cooperatives are regulated by the division, but homeowners' associations are not regulated. Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide many comparable requirements for the governance of these associations. For example, they delineate requirements for notices of meetings,³¹ official records, including which records are accessible to the members of the association,³² and financial reporting.³³ Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

Condominium, cooperative, and homeowners associations (collectively, community associations) may be a Florida corporation for profit or a Florida corporation not for profit. If the association is a corporation for profit, the provision of ch. 607, the Florida Business Corporation Act, would apply. If the association is a corporation not for profit, the provisions of ch. 617, F.S., the Florida Not for Profit Corporation Act, would apply.³⁴

²⁸ Section 718.501(1), F.S., s. 719.501(1), F.S.

²⁹ *Id.*

³⁰ *Id.*, See Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 12 ed. (2010-2011) s. 14.2.

³¹ See s. 718.112(2), F.S., for condominiums, s. 719.106(2)(c), F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners' associations.

³² See s. 718.111(12), F.S., for condominiums, s. 719.104(2), F.S., for cooperatives, and s. 720.303(4), F.S., for homeowners' associations.

³³ See s. 718.111(13), F.S., for condominiums, s. 719.104(4), F.S., for cooperatives, and s. 720.303(7), F.S., for homeowners' associations.

³⁴ See ss. 718.111(1)(a), 719.1035, and 720.303(1), F.S.

Community Associations - Voting

A condominium association is required to have an annual meeting at which directors are elected.³⁵ Votes must be cast by written ballot or voting machine.³⁶ Proxies may not be used in the election.³⁷ The division's rules for condominium associations also provide voting and election procedures, such as requiring that paper ballots be mailed in double envelopes.³⁸ Similar requirements apply to cooperative associations.³⁹

A homeowners association is also required to hold board of director elections at its annual meeting or as provided in its governing documents.⁴⁰ Elections are conducted in accordance with the procedures set forth in the governing documents of the association.⁴¹ Additionally, proxies may be used in the election unless otherwise provided in the governing documents.⁴²

Community Association Meetings

Condominium, cooperative, and homeowners' association members have the right to attend meetings of the board and its committees and the right to speak at such meetings. Any member may tape record or videotape meetings of the board.⁴³

Community Associations – Fines and Penalties

Condominium, cooperative, and homeowners' associations may levy fines against members of the association who violate the association's rules or other governing documents.⁴⁴ A fine may only be levied after the association has provided the member with notice and a hearing. The hearing must be held before a committee of other members who are not board members or persons residing in the board member's household.⁴⁵

A fine may not exceed \$100 per violation, or \$1000 in the aggregate.⁴⁶ If a member is more than 90 days delinquent on a monetary obligation, the association may suspend his or her right to use common elements, facilities, or areas and may suspend his or her voting rights. If the association member fails to pay a monetary obligation, he or she is barred from being nominated for a seat on the board.⁴⁷ If the board member or officer of a condominium association is more than 90 days delinquent on a monetary obligation, the board member or officer is deemed to have abandoned his or her seat on the board.⁴⁸

³⁵ Section 718.112(2)(d)1., F.S.; see Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 40-57 (14th. ed.)

³⁶ Section 718.112(2)(d)4., F.S.

³⁷ *Id.*

³⁸ Rule 61B-23.0021, F.A.C.

³⁹ Section 719.106(1)(d), F.S., and rule 61B-75.005, F.A.C.

⁴⁰ Section 720.306(2), F.S.

⁴¹ Section 720.306(9)(a), F.S.

⁴² Section 720.306(8), F.S.

⁴³ Sections 718.112(2)(c), 719.106(1)(c), and 723.078(c)4., F.S.

⁴⁴ Sections 718.303(3), 719.303(3), and 720.305(1), F.S.

⁴⁵ *Id.*

⁴⁶ Sections 718.303(3), 719.303(3), 720.305(2), F.S.

⁴⁷ Sections 718.303(4), 719.303(4), and 720.305(3), F.S.

⁴⁸ Section 718.112(2)(n), F.S.

Section 719.303(5), F.S., provides that when a cooperative association member's voting rights have been suspended, the total number of voting interests of the association must be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action. Chapter 718, F.S., and ch. 720, F.S., do not provide a comparable provision for condominium and homeowners' associations, respectively.

III. Effect of Proposed Changes:

Documentary Stamp Tax

The bill (section 1) amends s. 201.02(9), F.S., to provide that a document that transfers property to a condominium, cooperative, or homeowners' associations, or vacation and timeshare management or owners' association in lieu of foreclosure of an assessment lien is subject to documentary stamp tax based solely on the amount of unpaid assessments on the date of the transfer.

Proxy Voting

The bill (section 2) amends s. 617.0721(2), F.S., to permit, notwithstanding any provision to the contrary in the articles of incorporation or bylaws, corporations not for profit to use a copy, facsimile, or other reliable reproduction of the original proxy for any purpose for which the original proxy could be used if it is a complete reproduction of the entire proxy.

Condominiums – Definitions

The bill (section 3) creates s. 718.103(12), F.S., to define the term "condominium documents" to mean all duly adopted and recorded amendments, supplements, and exhibits of the declaration, the recorded articles of incorporation and bylaws, duly adopted and recorded amendments of the declaration, and rules and regulations.

The bill (section 6) amends s. 718.113(7), F.S., to replace the term "governing documents" with the term "condominium documents."

The bill (section 3) amends the definition of the term "developer" in s. 718.103(16), F.S., to exclude bulk-unit purchasers and lender-unit purchasers to reflect their creation and regulation in the bill (section 13). The bill also excludes from the definition of "developer":

- A person who owns 7 or fewer units operated by an association consisting of 40 or fewer units or who owns less than 20 percent of the units operated by an association consisting of more than 40 units; and
- The trustee and any related trust association of a timeshare trust.

Condominiums – Assessments for Use of Common Elements.

The bill (section 4) amends s. 718.111(4), F.S., to provide that the association may charge a fee against the unit owners for use of common elements or association property if the fee is

authorized by a majority vote of the voting interests present, in person or by proxy, at a meeting of the association in which a quorum has been established.

Condominiums - Insurance

The bill (section 4) amends s. 718.111(11)(j), F.S., to provide that, in cases where damage to condominium property is not the result of an insurable event, the maintenance provisions of the declaration or bylaws determine whether the association or the unit owners are responsible for the repair or replacement.

The bill also amends s. 718.111(11)(j), F.S., to delete uninsured losses from the list of items that are deemed a common expense of the condominium. It is not clear whether the effect of this provision is that uninsured losses are “damages in excess of property insurance coverage” and thus deemed a common expense of the condominium as provided in this section.

Community Associations – Recording Meetings

The bill (section 5) amends s. 718.112(2)(c) and (d), F.S., to provide that association members may not post tape or video recordings of meetings of the board or of the membership on any website or other media that can be readily viewed by persons who are not members of the association.

The bill also amends s. 719.106(1)(c) and (d), F.S., for cooperatives (section 16), and s. 720.306(10), F.S., for homeowners’ associations (section 23), to provide a comparable provision for recording of cooperative and homeowners’ association board and member meetings.

Condominium – Meeting Notices

The bill (section 5) amends s. 718.112(2)(d), F.S., to permit condominium associations to post meeting notices on association property in addition to condominium property.

Condominium – Annual Budget and Developers

The bill (section 5) amends s. 718.112(2)(f)2.b., F.S., to clarify that, for the period before turnover of control, the developer’s vote to reduce or waive the funding of reserves is based on the developers voting interests allocated to its units.

Community Associations – Assessments and Foreclosure

The bill (section 7) amends s. 718.116, F.S., to provide that a condominium unit owner is liable for any special assessments or installments on special assessments coming due during his or her period of ownership, regardless of when it was levied. It also provides that a unit owner is jointly and severally liable with the previous unit owner for all interest, late fees, costs, and reasonable attorney fees incurred by the association in collecting unpaid assessments up to the time of transfer of title. It provides that the joint and several liability does not apply to an owner who acquires title through purchase of a tax deed. The bill also limits the liability of a first mortgagee

or its successor or assignee who acquires title to a unit by foreclosure or by deed in lieu of foreclosure for unpaid interest, late fees, costs and reasonable attorney fees, and any other fee, cost, or expense incurred by the association in the collection process.

The bill amends s. 718.116(3), F.S., to permit condominium associations to recover from the unit owner any reasonable charges imposed upon the association under a written contract with its management or bookkeeping company or collection agent, incurred in connection with collecting a delinquent assessment.

The provision applies to the collection charges that are in a liquidated amount and must be based on the actual time expended performing necessary, non-duplicative services. The association may not recover fees for collection services for the period after the matter has been referred to the association's legal counsel. Any payment received from the unit owner must be applied in the following order: first to the interest accrued, then the administrative late fee, then costs and reasonable attorney fees incurred in collection, then the bill adds the payment for any reasonable costs for collection services contracted by the association, and then to the delinquent assessment. The bill provides that this payment priority applies notwithstanding s. 673.3111, F.S.,⁴⁹ or any purported accord and satisfaction. This statement of application is intended to clarify existing law.

The bill amends s. 718.116(5)(b), F.S., to permit the condominium association to file a lien on unpaid authorized administrative late fees and reasonable costs for collection services contracted by the associations.

Condominiums – Electronic Voting

The bill creates ss. 718.128 (section 8), 719.129 (section 18), and 720.317 (section 25), F.S., to provide that a condominium, cooperative, and homeowners' associations, respectively, may elect to conduct elections by electronic voting in the manner provided in these provisions.

The bill does not define the term "electronic voting."⁵⁰

Each member must consent, in writing, to vote electronically. The association must provide each member with a method to:

- Authenticate the member's identity to the electronic voting system;
- Secure the member's vote from, among other things, malicious software and the ability of others to remotely monitor or control the electronic voting platform;
- Communicate with the electronic voting system;
- Review an electronic ballot before its transmission to the electronic voting system;

⁴⁹ Section 673.3111, F.S., relates to accord and satisfaction by negotiable instrument, which provides the method for resolving a dispute on a debt with a statement on the negotiable instrument to the effect that the instrument was tendered as full satisfaction of the claim.

⁵⁰ The term "electronic voting" is not defined in the Florida Statutes. Section 101.5603(4), F.S., defines the term "electronic or electromechanical voting system" to mean a system of casting votes by use of voting devices or marking devices and counting ballots by employing automatic tabulating equipment or data processing equipment, and the term includes touchscreen systems."

- Transmit an electronic ballot to the electronic voting system that ensures the secrecy and integrity of each ballot;
- Verify the authenticity of receipts sent from the electronic voting system;
- Confirm, at least 14 days before the voting deadline, that the member's electronic voting platform can successfully communicate with the electronic voting system; and
- Vote by mail or to deliver a ballot in person in the event of a disruption of the electronic voting system.

In addition, an electronic voting system must be:

- Accessible to members with disabilities;
- Secure from, among other things, malicious software and the ability of others to remotely monitor or control the system;
- Able to authenticate the member's identity;
- Able to communicate with each member's electronic voting platform;
- Able to authenticate the validity of each electronic ballot to ensure that the ballot is not altered in transit;
- Able to transmit a receipt from the electronic voting system to each member who casts an electronic ballot;
- Able to permanently separate any authentication or identifying information from the electronic ballot, rendering it impossible to tie a ballot to a specific member;
- Able to allow the member to confirm that his or her ballot has been received and counted; and
- Able to store and keep electronic ballots accessible to election officials for recount, inspection, and review purposes.

Members who vote electronically must be counted as being in attendance at the meeting for purposes of determining a quorum.

These electronic voting provisions do not apply unless the association bylaws provide for and allow electronic voting. The electronic voting provisions may be applied to some or all matters for which a vote of the membership is required.

Condominiums - Transfer of Developer Control

The bill (section 9) amends s. 718.301(1), F.S., to include the following additional events that trigger transfer of control from the developer to the non-developer unit owners:

- When a bulk-unit purchaser who owns a majority of the units files a bankruptcy petition;
- When a receiver for a bulk-unit purchaser who owns a majority of the units is appointed by a circuit court and is not discharged within 30 days after such appointment; and
- Five years after the date of recording of the first conveyance to a bulk-unit purchaser that owns a majority of the units.

The bill also amends s. 718.301(4), F.S., to apply the post-turnover requirements in this section to bulk-unit purchasers, including requirements for the relinquishment of specified records.

Condominiums – Agreements Entered into by the Association

The bill (section 10) amends s. 718.302, F.S., to prohibit a lender-unit purchaser from voting on the cancellation of a contract made by the association while the association is under control of that lender-unit purchaser. It also provides for the voting rights of a lender-unit purchaser or a bulk-unit purchaser as they relate to the voting rights of the developer in various ownership situations.

Community Associations – Fines and Penalties

The bill amends ss. 718.303 (section 11), 719.303 (section 19), and 720.305 (section 22), F.S., to revise the fine and penalty provisions for condominium, cooperative, and homeowners' associations, respectively. The board of the association is to levy any fines and an impartial committee is to be formed solely for the purpose of determining whether to confirm or reject the fine or suspension recommended by the board. Neither the board's authorized designee nor persons residing in the home of the board's designee may sit on the committee.

With regard to condominium and homeowners' associations, when an owner or member's voting rights have been suspended, the total number of voting interests of the association must be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action. This provision is comparable to the restriction on voting by a suspended member of a cooperative association in existing s. 719.303(5), F.S.

For condominium and homeowners' associations, any suspensions imposed apply even if the suspension arose from less than all of the units or parcels owned by the member. There is no comparable provision for cooperative associations.

The bill (section 23) also amends s. 720.306(9)(b), F.S., to provide that an association member's failure to pay a fee, fine, or other monetary obligation bars him or her from being nominated for the board, and, if he or she is currently a board member, failure to pay after 90 days results in abandonment of his or her seat on the board. This provision is comparable to the current restriction in s. 718.112(2)(n), F.S., for members of a condominium board.

Division of Florida Condominiums, Timeshares, and Mobile Homes

This bill (section 12) amends s. 718.501, F.S., to provide that the department has jurisdiction and regulatory authority over bulk-unit purchasers and lender-unit purchasers.

Distressed Condominium Relief Act

The bill (section 13) creates s. 718.709, F.S., to provide that ss. 718.701-718.108, F.S., the Distressed Condominium Relief Act, apply to title to units acquired on or after July 1, 2010 (the effective date of the act), but before July 1, 2016 (the final date for classification as a bulk buyer or bulk assignee).

Condominiums - Bulk-Unit Purchasers and Lender-Unit Purchasers

The bill (section 14) creates Part VIII of ch. 718, F.S., consisting of ss. 718.801-718.813, F.S., entitled “Bulk-Unit Purchasers and Lender-Unit Purchasers.”

New s. 718.801, F.S., provides a statement of legislative intent that it is the public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to bulk-unit purchasers or lender-unit purchasers of condominium units and that there is a need to balance such interests by limiting the applicability of the Distressed Condominium Relief Act.

Definitions

The bill creates s. 718.802, F.S., to define the terms “bulk assignee,” “bulk-unit purchaser,” “bulk buyer,” and “lender-unit purchaser.”

The definition of “bulk assignee” is similar to the definition of that term under the Distressed Condominium Relief Act.

“Bulk-unit purchaser is defined as a person who acquires title to the greater of at least eight units or 20 percent of the units that ultimately will be operated by the same association. A person who acquires units or timeshare interests in a condominium that will be included in a timeshare plan, may elect to be a bulk-unit purchaser. The term does not include a purchaser who acquired title to defraud or harm a purchaser, unit owner, or the association; where the acquirer would be an insider of the bulk-unit purchaser or the developer; or where the acquisition is a fraudulent transfer under ch. 726, F.S.

“Bulk buyer” is defined as a person who acquired parcels as a bulk buyer under the Distressed Condominium Relief Act. The term also includes a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of any developer rights or receives only some or all of the specified rights. The rights include:

- The right to conduct sales, leasing, and marketing activities within the condominium.
- The right to be exempt from the payment of working capital contributions to the condominium association; and
- The right to be exempt from any rights of first refusal.

“Lender-unit purchaser” is defined as a mortgagee, who holds a mortgage from a developer or bulk-unit purchaser, who subsequently obtains title to the units through foreclosure or deed in lieu of foreclosure, and who elects to become a lender-unit purchaser by providing written notice of the election to the condominium association.

Developer Rights of Bulk-Unit Purchasers and Lender-Unit Purchasers

The bill creates s. 718.803, F.S., relating to the developer rights of bulk-unit purchasers and lender-unit purchasers. Generally, a lender-unit purchaser may exercise any developer rights that the lender-unit purchaser acquires. However, a bulk-unit purchaser may only exercise the following developer rights, provided they are contained in the condominium declaration:

- The right to conduct sales, leasing, and marketing activities within the condominium;

- The right to assign limited common elements and use rights to common elements and association property which were not assigned before the bulk-unit purchaser acquired title; and
- For a phase condominium, the right to add phases.

If a bulk-unit purchaser exercises developer rights other than those specified, it is no longer deemed to be a bulk-unit purchaser.

The bill also provides a time-frame by which a bulk-unit purchaser must pay a working capital contribution to the association in situations where the initial purchaser of a unit from the developer is required to make a working capital contribution to the association.

Compliance with Existing Sales and Reservation Laws

The bill creates s. 718.804, F.S., to require bulk-unit purchasers and lender-unit purchasers to comply with the requirements of s. 718.202, F.S.,⁵¹ and Part V of ch. 718, F.S.,⁵² in connection with any units they own or sell.

Voting Rights Related to Funding of Reserves

The bill creates s. 718.805, F.S., to provide that for the first two years following the first conveyance of a unit to a bulk-unit purchaser or lender-unit purchaser, the bulk-unit purchaser or lender-unit purchaser may vote the voting interests allocated to its units to waive reserves or reduce the funding of reserves. After these two years, the bulk-unit purchaser or lender-unit purchaser may not make such votes until it holds less than a majority of the voting interests in the association.

Assessment Liability and Election of Directors

The bill creates s. 718.806, F.S., relating to the liability of bulk-unit purchasers and lender-unit purchasers for assessments. A bulk-unit purchaser is liable for all assessments on its units that become due while it holds title to the units. The bulk-unit purchaser is jointly and severally liable with the previous owner for all unpaid assessments which became due before the acquisition of title, for all other monetary obligations accrued which are secured by the association's lien, and for all costs advanced by the association for the maintenance and repair of the units acquired by the bulk-unit purchaser.

A lender-unit purchaser's liability for assessments for the units the lender-unit purchaser owns is limited to the lesser of the units' unpaid regular assessments that accrued during the 12 months immediately preceding the lender-unit purchaser's acquisition of title or one percent of the original mortgage debt.

The lender-unit purchaser acquiring title must comply with s. 718.116(1)(c), F.S., which requires that the person acquiring title must pay the amount owed to the association within 30 days after transfer of title.

⁵¹ Section 718.202, F.S., relates to sales or reservation deposits made prior to closing.

⁵² Part V of ch. 718, F.S., regulates sales and disclosures prior to sales of residential condominiums.

Amendments and Material Alterations

The bill creates s. 718.807, F.S., to provide that the following amendments or alterations may not be made unless they are approved by a majority vote of unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser:

- An amendment related to the configuration of a unit or to create a timeshare;
- An amendment creating, changing, or terminating leasing restrictions;
- An amendment of the declaration pertaining to the condominium's status as housing for older persons;
- An amendment related to reclassification as a limited common element; and
- Material alterations to the common elements or association property any time a bulk-unit purchaser, a lender-unit purchaser, developer, or a combination thereof owns a percentage of voting interests equal to or greater than the percentage required to approve the amendment.

The bill requires consent of the developer, a bulk-unit purchaser, or a lender-unit purchaser for an amendment that would otherwise require the approval of their voting interests as required by the declaration, articles of incorporation, bylaws, or current law.

Warranties and Disclosures

The bill creates s. 718.808, F.S., related to the warranties and disclosures that bulk-unit purchasers and lender-unit purchasers are required to provide. A bulk-unit purchaser or lender-unit purchaser grants an implied warranty of fitness and merchantability to a purchaser of each unit sold for a period of 3 years, which begins on the date of the completion of repairs or improvements that the bulk-unit purchaser or lender-unit purchaser makes to the unit, common elements, or limited common elements.

The bill tolls the statute of limitations in s. 718.203, F.S., which provides the applicable periods for warranties granted by the developer, while the bulk-unit purchaser begins the process of appointing or electing a majority of the board.

A bulk-unit purchaser or lender-unit purchaser must include a disclosure to purchasers on any sales contract that states that the seller is not the developer of the condominium for any purpose under the ch. 718, F.S. A lender-unit purchaser must also disclose that it took title to the units being sold by foreclosure or deed in lieu of foreclosure.

At or before the signing of a contract to sell a unit, a bulk-unit purchaser or lender-unit purchaser must provide a condition report to the prospective purchaser. The condition report must include a reasonably detailed description of the repairs or replacements necessary to cure construction defects identified in the report. The report must be prepared before the bulk-unit purchaser or the lender-unit purchaser enters into its first sales contract, but not more than 6 months before the first sales contract is agreed upon. It must be updated no later than 1 year after the first closing and each year thereafter.

If during the course of preparing the condition report the architect or engineer becomes aware of a component that violates an applicable building code or law or that deviates from the building plans, the architect or engineer must disclose such information in the report. The architect or

engineer must make written inquiry to the applicable local government of any building code violations and include in the condition report the government's response or failure to respond.

If a condition report is not provided to a purchaser, the bulk-unit purchaser or lender-unit purchaser grants implied warranties of fitness and merchantability, which are not limited to the construction, improvements, or repairs that it undertakes to the condominium.

Joint and Several Liability

The bill creates s. 718.809, F.S., to provide that for the purposes of ch. 718, F.S., if there are multiple bulk-unit purchasers, the units owned by the bulk-unit purchasers and the rights of the bulk-unit purchasers will be aggregated as if there were only one bulk-unit purchaser. Each bulk-unit purchaser is jointly and severally liable with his or her predecessor bulk-unit purchasers for compliance with the chapter.

Construction Disputes

The bill creates s. 718.810, F.S., to provide that a condominium board of administration composed of a majority of directors elected or appointed by a bulk-unit purchaser may not resolve a construction dispute that is subject to ch. 558, F.S.,⁵³ unless the resolution is approved by a majority of the voting interests of the unit owners other than the developer and a bulk-unit purchaser.

Noncompliance

The bill creates s. 718.811, F.S., to provide that a bulk-unit purchaser or a lender-unit purchaser who fails to comply with the requirements of ch. 718, F.S., relating to the obligations and rights of bulk-unit purchasers and lender-unit purchasers, forfeits all protections provided under the Condominium Act.

Documents to be Delivered upon Turnover

The bill creates s. 718.812, F.S., to provide that when a bulk-unit purchaser is no longer entitled to elect the majority of the board, the bulk-unit purchaser must deliver all of the items specified in s. 718.301(4), F.S., that are in the bulk-unit purchaser's possession to the association. The bulk-unit purchaser must try to get turnover materials from the original developer and must list materials that it was unable to obtain.

Timeshare Condominiums

The bill creates s. 718.813, F.S., to provide that, with respect to acquisition of units or timeshare interests that are ultimately to be included in a timeshare plan under ch. 721, F.S., a person who is otherwise qualified to be a bulk-unit purchaser is only a bulk-unit purchaser if the person elects to be by providing notice to the condominium association. Additionally, when selling units or timeshare interests, the bulk-unit purchaser must disclose to buyers that the seller is not the developer of the condominium for any purpose under the Condominium Act.

⁵³ Chapter 558, F.S., provides for presuit notice and an opportunity to cure construction defects.

Homeowners' Associations – Governing Documents

The bill (section 20) amends s. 720.301, F.S., to revise the definition of the term “governing documents,” to include the rules and regulations adopted under the authority of the association’s declaration, articles of incorporation, or bylaws.

Homeowners' Association Act

The bill (section 21) creates s. 720.3015, F.S., to provide that ch. 720, F.S., may be cited as the “Homeowners’ Association Act.”

Homeowners' Associations - Amendments to Governing Documents

The bill (section 23) amends s. 720.306(1)(b), F.S., to provide that the association’s failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

Effective Date

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill prohibits members of a community association from posting tape or video recordings of meetings of the board or of the membership on any website or other media that can be readily viewed by persons who are not members of the association. This provision may raise free speech issues under the First Amendment of the U.S. Constitution and Article I, Section 4 of the Florida Constitution, which guarantee freedom of speech and promote the free exchange of ideas and information by prohibiting the government from restricting speech because of its content. Prior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights. As such, prior restraints are presumed unconstitutional. Therefore, only in “exceptional cases,” will the courts consider censorship of publication acceptable.⁵⁴

⁵⁴ See *Post-Newsweek Stations Orlando, Inc. v. Guetzloe*, 968 So.2d 608, 610 (Fla. 5th DCA 2007).

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

None.

B. Private Sector Impact:

The bill permits community associations to recover from their members fees for collection services and to file a lien on unpaid authorized administrative late fees, and reasonable costs for collection services contracted by the associations.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 202.02, 617.0721, 718.103, 718.111, 718.112, 718.113, 718.116, 718.301, 718.302, 718.303, 718.501, 719.104, 719.106, 719.108, 719.303, 720.301, 720.3015, 720.303, 720.306, and 720.3085.

This bill creates the following sections of the Florida Statutes: 718.128, 718.709, 718.801, 718.802, 718.803, 718.804, 718.805, 718.806, 718.807, 718.808, 718.809, 718.810, 718.811, 718.812, 718.813, 719.129, and 720.317.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Regulated Industries on March 18, 2015:

The committee substitute (CS) amends s. 201.02(9), F.S., to provide that a document that transfers property to a condominium, cooperative, or homeowners' associations, or vacation and timeshare management or owners' association in lieu of foreclosure of an assessment lien is subject to documentary stamp tax based solely on the amount of unpaid assessments on the date of the transfer.

The CS creates s. 718.103(12), F.S., to define the term "condominium documents." It also amends s. 718.103(16), F.S., to exclude from the definition of the term "developer" bulk-unit purchasers and lender-unit purchasers. It also excludes from the definition

persons who own seven or fewer units operated by an association consisting of 40 or fewer units or who own less than 20 percent of the units operated by an association consisting of more than 40 units, and the trustee and any related trust association of a timeshare trust.

The CS amends s. 718.111(11)(j), F.S., to provide that in cases where the damage is not the result of an insurable event, the maintenance provisions of declaration or bylaws determine whether the association or the unit owners are responsible for the repair or replacement. It also amends this section to delete uninsured losses from the list of items that are deemed a common expense of the condominium.

The CS amends s. 718.112(2)(f)2.b., F.S., to clarify that, for the period before turnover of control, the developer's vote to reduce or waive the funding of reserves is based on the developers voting interests allocated to its units.

The CS amends s. 718.113(7), F.S., to replace the term "governing documents" with the term "condominium documents."

The CS amends s. 718.116(3), F.S., to include s. 673.3111, F.S., or any purported accord and satisfaction in the list of matters that this order for applying payments is notwithstanding.

The CS creates ss. 718.128, 719.129, and s. 720.317, F.S., to provide that a condominium, cooperative, and homeowners' association, respectively, may elect to conduct elections by electronic voting in the manner provided.

The CS amends s. 718.301(1), F.S., to include three additional events that trigger transfer of control from the developer to the non-developer unit owners, and to apply the post-turnover requirement to bulk-unit purchasers.

The CS amends s. 718.302, F.S., to prohibit a lender-unit purchaser from voting on the cancellation of a contract, grant, reservation made by the association while the association is under control of that lender-unit purchaser. It also amends s. 718.302, F.S., relating to the rights of the developer unit owner to vote on making and cancelling agreements, to include the voting interests of the lender-unit purchasers and the bulk-unit purchasers juxtaposed to the voting rights of the developer.

The CS amends ss. 718.303, 719.303, 720.305, and 720.306, F.S., to revise the fine and penalty provisions for condominium, cooperative, and homeowners' associations.

The CS amends s. 718.501, F.S., to provide that the department has jurisdiction and regulatory authority over bulk-unit purchasers and lender-unit purchasers.

The bill creates s. 718.709, F.S., to provide that ss. 718.701-718.108, F.S., apply to title to units acquired on or after July 1, 2010, but before July 1, 2016.

The CS creates Part VIII of ch. 718, F.S., consisting of ss. 718.801-718.812, F.S., entitled “Bulk-Unit Purchasers and Lender-Unit Purchasers.”

The CS amends s. 720.301, F.S., to revise the definition of the term “governing documents,” to include the rules and regulations adopted under the authority of the association's declaration, articles of incorporation, or bylaws.

The CS creates s. 720.3015, F.S., to provide that ch. 720, F.S., may be cited as the “Homeowners’ Association Act.”

B. Amendments:

None.



406496

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 645 - 2912

and insert:

allowed by the applicable bylaws or declaration or any law. ~~If~~
~~authorized by the bylaws,~~ Notice of meetings of the board of
administration, unit owner meetings, except unit owner meetings
called to recall board members under paragraph (j), and
committee meetings may be given by electronic transmission to
unit owners who consent to receive notice by electronic
transmission.



406496

12 7. Unit owners have the right to participate in meetings of
13 unit owners with reference to all designated agenda items.
14 However, the association may adopt reasonable rules governing
15 the frequency, duration, and manner of unit owner participation.

16 8. A unit owner may tape record or videotape a meeting of
17 the unit owners subject to reasonable rules adopted by the
18 division; however, a unit owner may not post the recording on
19 any website or other media that can readily be viewed by persons
20 who are not members of the association.

21 9. Unless otherwise provided in the bylaws, any vacancy
22 occurring on the board before the expiration of a term may be
23 filled by the affirmative vote of the majority of the remaining
24 directors, even if the remaining directors constitute less than
25 a quorum, or by the sole remaining director. In the alternative,
26 a board may hold an election to fill the vacancy, in which case
27 the election procedures must conform to sub-subparagraph 4.a.
28 unless the association governs 10 units or fewer and has opted
29 out of the statutory election process, in which case the bylaws
30 of the association control. Unless otherwise provided in the
31 bylaws, a board member appointed or elected under this section
32 shall fill the vacancy for the unexpired term of the seat being
33 filled. Filling vacancies created by recall is governed by
34 paragraph (j) and rules adopted by the division.

35 10. This chapter does not limit the use of general or
36 limited proxies, require the use of general or limited proxies,
37 or require the use of a written ballot or voting machine for any
38 agenda item or election at any meeting of a timeshare
39 condominium association or nonresidential condominium
40 association.



406496

41
42 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
43 association of 10 or fewer units may, by affirmative vote of a
44 majority of the total voting interests, provide for different
45 voting and election procedures in its bylaws, which may be by a
46 proxy specifically delineating the different voting and election
47 procedures. The different voting and election procedures may
48 provide for elections to be conducted by limited or general
49 proxy.

50 (f) Annual budget.—

51 1. The proposed annual budget of estimated revenues and
52 expenses must be detailed and must show the amounts budgeted by
53 accounts and expense classifications, including, at a minimum,
54 any if applicable, but not limited to, those expenses listed in
55 s. 718.504(21). A multicondominium association shall adopt a
56 separate budget of common expenses for each condominium the
57 association operates and shall adopt a separate budget of common
58 expenses for the association. In addition, if the association
59 maintains limited common elements with the cost to be shared
60 only by those entitled to use the limited common elements as
61 provided for in s. 718.113(1), the budget or a schedule attached
62 to it must show the amount budgeted for this maintenance. If,
63 after turnover of control of the association to the unit owners,
64 any of the expenses listed in s. 718.504(21) are not applicable,
65 they need not be listed.

66 2.a. In addition to annual operating expenses, the budget
67 must include reserve accounts for capital expenditures and
68 deferred maintenance. These accounts must include, but are not
69 limited to, roof replacement, building painting, and pavement



406496

70 resurfacing, regardless of the amount of deferred maintenance
71 expense or replacement cost, and ~~for~~ any other item that has a
72 deferred maintenance expense or replacement cost that exceeds
73 \$10,000. The amount to be reserved must be computed using a
74 formula based upon estimated remaining useful life and estimated
75 replacement cost or deferred maintenance expense of each reserve
76 item. The association may adjust replacement reserve assessments
77 annually to take into account any changes in estimates or
78 extension of the useful life of a reserve item caused by
79 deferred maintenance. This subsection does not apply to an
80 adopted budget in which the members of an association have
81 determined, by a majority vote at a duly called meeting of the
82 association, to provide no reserves or less reserves than
83 required by this subsection.

84 b. Before ~~However, prior to~~ turnover of control of an
85 association by a developer to unit owners other than a developer
86 pursuant to s. 718.301, the developer may vote the voting
87 interests allocated to its units to waive the reserves or reduce
88 the funding of reserves through the period expiring at the end
89 of the second fiscal year after the fiscal year in which the
90 certificate of a surveyor and mapper is recorded pursuant to s.
91 718.104(4)(e) or an instrument that transfers title to a unit in
92 the condominium which is not accompanied by a recorded
93 assignment of developer rights in favor of the grantee of such
94 unit is recorded, whichever occurs first, after which time
95 reserves may be waived or reduced only upon the vote of a
96 majority of all nondeveloper voting interests voting in person
97 or by limited proxy at a duly called meeting of the association.
98 If a meeting of the unit owners has been called to determine



406496

99 whether to waive or reduce the funding of reserves, and no such
100 result is achieved or a quorum is not attained, the reserves
101 included in the budget shall go into effect. After the turnover,
102 the developer may vote its voting interest to waive or reduce
103 the funding of reserves.

104 3. Reserve funds and any interest accruing thereon shall
105 remain in the reserve account or accounts, and may be used only
106 for authorized reserve expenditures unless their use for other
107 purposes is approved in advance by a majority vote at a duly
108 called meeting of the association. Before ~~Prior to~~ turnover of
109 control of an association by a developer to unit owners other
110 than the developer pursuant to s. 718.301, the developer-
111 controlled association may ~~shall~~ not vote to use reserves for
112 purposes other than those ~~that~~ for which they were intended
113 without the approval of a majority of all nondeveloper voting
114 interests, voting in person or by limited proxy at a duly called
115 meeting of the association.

116 4. The only voting interests that are eligible to vote on
117 questions that involve waiving or reducing the funding of
118 reserves, or using existing reserve funds for purposes other
119 than purposes for which the reserves were intended, are the
120 voting interests of the units subject to assessment to fund the
121 reserves in question. Proxy questions relating to waiving or
122 reducing the funding of reserves or using existing reserve funds
123 for purposes other than purposes for which the reserves were
124 intended must ~~shall~~ contain the following statement in
125 capitalized, bold letters in a font size larger than any other
126 used on the face of the proxy ballot: **WAIVING OF RESERVES, IN**
127 **WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING**



406496

128 RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF
129 UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

130 Section 6. Subsection (7) of section 718.113, Florida
131 Statutes, is amended to read:

132 718.113 Maintenance; limitation upon improvement; display
133 of flag; hurricane shutters and protection; display of religious
134 decorations.-

135 (7) Notwithstanding the provisions of this section or the
136 condominium governing documents of a condominium or a
137 multicondominium association, the board of administration may,
138 without any requirement for approval of the unit owners, install
139 upon or within the common elements or association property solar
140 collectors, clotheslines, or other energy-efficient devices
141 based on renewable resources for the benefit of the unit owners.

142 Section 7. Paragraphs (a) and (b) of subsection (1),
143 subsection (3), and paragraph (b) of subsection (5) of section
144 718.116, Florida Statutes, are amended to read:

145 718.116 Assessments; liability; lien and priority;
146 interest; collection.-

147 (1) (a) A unit owner, regardless of how the unit owner has
148 acquired his or her title has been acquired, including, but not
149 limited to, by purchase at a foreclosure sale or by deed in lieu
150 of foreclosure, is liable for all assessments that which come
151 due while he or she is the unit owner, including any special
152 assessments or installments on special assessments coming due
153 during the period of ownership, regardless of when the special
154 assessment was levied. Additionally, a unit owner is jointly and
155 severally liable with the previous unit owner for all unpaid
156 monthly and special assessments, interest and late fees on both



406496

157 unpaid assessments and unpaid special assessments, and costs and
158 reasonable attorney fees incurred by the association in an
159 attempt to collect all such amounts that came due up to the time
160 of transfer of title. This joint and several liability of a
161 subsequent unit owner does not apply to an owner who acquires
162 title through purchase of a tax deed and is without prejudice to
163 any right the present unit owner may have to recover from the
164 previous unit owner the amounts paid by the present unit owner.
165 For the purposes of this section paragraph, the term "previous
166 unit owner" does not include an association that acquires title
167 to a unit delinquent property through foreclosure or by deed in
168 lieu of foreclosure. A present unit owner's liability for unpaid
169 assessments, interest, late fees, and costs and reasonable
170 attorney fees is limited to any unpaid assessments, interest,
171 late fees, and costs and reasonable attorney fees that accrued
172 before the association acquired title to the unit delinquent
173 property through foreclosure or by deed in lieu of foreclosure.

174 (b)1. The liability of a first mortgagee or its successor
175 or assignees who acquire title to a unit by foreclosure or by
176 deed in lieu of foreclosure for the unpaid assessments,
177 interest, late fees, costs and reasonable attorney fees, and any
178 other fee, cost, or expense incurred by or on behalf of the
179 association in the collection process which ~~that~~ became due
180 before the mortgagee's acquisition of title is limited to the
181 lesser of:

182 a. The unit's unpaid common expenses and regular periodic
183 assessments which accrued or came due during the 12 months
184 immediately preceding the acquisition of title and for which
185 payment in full has not been received by the association; or



406496

186 b. One percent of the original mortgage debt. The
187 provisions of this paragraph apply only if the first mortgagee
188 joined the association as a defendant in the foreclosure action.
189 Joinder of the association is not required if, on the date the
190 complaint is filed, the association was dissolved or did not
191 maintain an office or agent for service of process at a location
192 which was known to or reasonably discoverable by the mortgagee.

193 2. An association, or its successor or assignee, that
194 acquires title to a unit through the foreclosure of its lien for
195 assessments is not liable for any unpaid assessments, late fees,
196 interest, or reasonable attorney ~~attorney's~~ fees and costs that
197 came due before the association's acquisition of title in favor
198 of any other association, as defined in s. 718.103(2) or s.
199 720.301(9), which holds a superior lien interest on the unit.
200 This subparagraph is intended to clarify existing law.

201 (3) Assessments and installments on assessments which are
202 not paid when due bear interest at the rate provided in the
203 declaration, from the due date until paid. The rate may not
204 exceed the rate allowed by law, and, if no rate is provided in
205 the declaration, interest accrues at the rate of 18 percent per
206 year. If provided by the declaration or bylaws, the association
207 may, in addition to such interest, charge an administrative late
208 fee of up to the greater of \$25 or 5 percent of each delinquent
209 installment for which the payment is late. The association may
210 also recover from the unit owner any reasonable charges imposed
211 upon the association under a written contract with its
212 management or bookkeeping company or collection agent which are
213 incurred in connection with collecting a delinquent assessment.
214 Such charges must be based on the actual time expended



406496

215 performing necessary, nonduplicative services. Fees for
216 collection are not recoverable for the period after referral of
217 the matter to an association's legal counsel. Any payment
218 received by an association must be applied first to any interest
219 accrued by the association, then to any administrative late fee,
220 then to any costs and reasonable attorney ~~attorney's~~ fees
221 incurred in collection, then to any reasonable costs for
222 collection services contracted by the association, and then to
223 the delinquent assessment. The foregoing is applicable
224 notwithstanding s. 673.3111, any purported accord and
225 satisfaction, or any restrictive endorsement, designation, or
226 instruction placed on or accompanying a payment. The preceding
227 sentence is intended to clarify existing law. A late fee is not
228 subject to chapter 687 or s. 718.303(4).

229 (5)

230 (b) To be valid, a claim of lien must state the description
231 of the condominium parcel, the name of the record owner, the
232 name and address of the association, the amount due, and the due
233 dates. It must be executed and acknowledged by an officer or
234 authorized agent of the association. The lien is not effective 1
235 year after the claim of lien was recorded unless, within that
236 time, an action to enforce the lien is commenced. The 1-year
237 period is automatically extended for any length of time during
238 which the association is prevented from filing a foreclosure
239 action by an automatic stay resulting from a bankruptcy petition
240 filed by the parcel owner or any other person claiming an
241 interest in the parcel. The claim of lien secures all unpaid
242 assessments that are due and that may accrue after the claim of
243 lien is recorded and through the entry of a final judgment, as



406496

244 well as interest, authorized administrative late fees, and all
245 reasonable costs and attorney attorney's fees incurred by the
246 association incident to the collection process, including, but
247 not limited to, any reasonable costs for collection services
248 contracted for by the association. Upon payment in full, the
249 person making the payment is entitled to a satisfaction of the
250 lien.

251 Section 8. Section 718.128, Florida Statutes, is created to
252 read:

253 718.128 Electronic voting.—The association may conduct
254 elections and other unit owner votes through an Internet-based
255 online voting system if a unit owner consents in writing to
256 online voting and if the following requirements are met:

257 (1) The association provides each unit owner with:

258 (a) A method to authenticate the unit owner's identity to
259 the online voting system.

260 (b) For elections of the board, a method to transmit an
261 electronic ballot to the online voting system that ensures the
262 secrecy and integrity of each ballot.

263 (c) A method to confirm, at least 14 days before the voting
264 deadline, that the unit owner's electronic device can
265 successfully communicate with the online voting system.

266 (2) The association uses an online voting system that is:

267 (a) Able to authenticate the unit owner's identity.

268 (b) Able to authenticate the validity of each electronic
269 vote to ensure that the vote is not altered in transit.

270 (c) Able to transmit a receipt from the online voting
271 system to each unit owner who casts an electronic vote.

272 (d) For elections of the board of administration, able to



406496

273 permanently separate any authentication or identifying
274 information from the electronic election ballot, rendering it
275 impossible to tie an election ballot to a specific unit owner.

276 (e) Able to store and keep electronic votes accessible to
277 election officials for recount, inspection, and review purposes.

278 (3) A unit owner voting electronically pursuant to this
279 section shall be counted as being in attendance at the meeting
280 for purposes of determining a quorum. A substantive vote of the
281 unit owners may not be taken on any issue other than the issues
282 specifically identified in the electronic vote when a quorum is
283 established based on unit owners voting electronically pursuant
284 to this section.

285 (4) This section applies to an association that provides
286 for and authorizes an online voting system pursuant to this
287 section by a board resolution. The board resolution must provide
288 that unit owners receive notice of the opportunity to vote
289 through an online voting system, must establish reasonable
290 procedures and deadlines for unit owners to consent in writing
291 to online voting, and must establish reasonable procedures and
292 deadlines for unit owners to opt out of online voting after
293 giving consent. Written notice of a meeting at which the
294 resolution will be considered must be mailed, delivered, or
295 electronically transmitted to the unit owners and posted
296 conspicuously on the condominium property or association
297 property at least 14 days before the meeting. Evidence of
298 compliance with the 14-day notice requirement must be made by an
299 affidavit executed by the person providing the notice and filed
300 with the official records of the association.

301 (5) A unit owner's consent to online voting is valid until



406496

302 the unit owner opts out of online voting according to the
303 procedures established by the board of administration pursuant
304 to paragraph (4).

305 (6) This section may apply to any matter that requires a
306 vote of the unit owners.

307 Section 9. Subsections (1) and (4) of section 718.301,
308 Florida Statutes, are amended to read:

309 718.301 Transfer of association control; claims of defect
310 by association.—

311 (1) If unit owners other than the developer own 15 percent
312 or more of the units ~~in a condominium~~ that ultimately will be
313 operated ~~ultimately~~ by an association, as provided in the
314 declaration, articles of incorporation, or bylaws as originally
315 recorded, the unit owners other than the developer are entitled
316 to elect at least one-third of the members of the board of
317 administration of the association. Unit owners other than the
318 developer are entitled to elect at least a majority of the
319 members of the board of administration of an association, ~~upon~~
320 ~~the first to occur of any~~ of the following events that occur:

321 (a) Three years after 50 percent of the units that
322 ultimately will be operated ~~ultimately~~ by the association, as
323 provided in the declaration, articles of incorporation, or
324 bylaws as originally recorded, have been conveyed to
325 purchasers.†

326 (b) Three months after 90 percent of the units that
327 ultimately will be operated ~~ultimately~~ by the association, as
328 provided in the declaration, articles of incorporation, or
329 bylaws as originally recorded, have been conveyed to
330 purchasers.†



406496

331 (c) When all the units that ultimately will be operated
332 ~~ultimately~~ by the association, as provided in the declaration,
333 articles of incorporation, or bylaws as originally recorded,
334 have been completed, some of them have been conveyed to
335 purchasers, and none of the others is ~~are~~ being offered for sale
336 by the developer in the ordinary course of business. ~~†~~

337 (d) When some of the units have been conveyed to purchasers
338 and none of the others is ~~are~~ being constructed or offered for
339 sale by the developer in the ordinary course of business. ~~†~~

340 (e) When the developer files a petition seeking protection
341 in bankruptcy. ~~†~~

342 (f) When a bulk-unit purchaser who owns a majority of the
343 units that ultimately will be operated by the association, as
344 provided in the declaration, articles of incorporation, or
345 bylaws as originally recorded, files a petition seeking
346 protection in bankruptcy.

347 (g) ~~(f)~~ When a receiver for the developer is appointed by a
348 circuit court and is not discharged within 30 days after such
349 appointment, unless the court determines within 30 days after
350 appointment of the receiver that transfer of control would be
351 detrimental to the association or its members. ~~† or~~

352 (h) When a receiver for a bulk-unit purchaser who owns a
353 majority of the units that ultimately will be operated by the
354 association, as provided in the declaration, articles of
355 incorporation, or bylaws as originally recorded, is appointed by
356 a circuit court and is not discharged within 30 days after such
357 appointment, unless the court determines within 30 days after
358 appointment of the receiver that transfer of control would be
359 detrimental to the association or its members.



406496

360 (i) Five years after the date of recording of the first
361 conveyance to a bulk-unit purchaser who owns a majority of the
362 units that ultimately will be operated by the association, as
363 provided in the declaration, articles of incorporation, or
364 bylaws as originally recorded. Notwithstanding that unit owners
365 other than the developer are entitled to elect a majority of the
366 members of the board of administration and notwithstanding s.
367 718.112(2)(f)2., 5 years after the date of recording of the
368 first conveyance of a unit to a bulk-unit purchaser who owns a
369 majority of the units, the bulk-unit purchaser may exercise the
370 right to vote for each unit owned by the bulk-unit purchaser in
371 the same manner as any other unit owner except for the purposes
372 of reacquiring control of the association or electing or
373 appointing a majority of the members of the board of
374 administration.

375 (j)~~(g)~~ Seven years after the date of the recording of the
376 certificate of a surveyor and mapper pursuant to s.
377 718.104(4)(e) or the recording of an instrument that transfers
378 title to a unit in the condominium which is not accompanied by a
379 recorded assignment of developer rights in favor of the grantee
380 of such unit, whichever occurs first; or, in the case of an
381 association that ~~may~~ ultimately may operate more than one
382 condominium, 7 years after the date of the recording of the
383 certificate of a surveyor and mapper pursuant to s.
384 718.104(4)(e) or the recording of an instrument that transfers
385 title to a unit which is not accompanied by a recorded
386 assignment of developer rights in favor of the grantee of such
387 unit, whichever occurs first, for the first condominium it
388 operates; or, in the case of an association operating a phase



406496

389 condominium created pursuant to s. 718.403, 7 years after the
390 date of the recording of the certificate of a surveyor and
391 mapper pursuant to s. 718.104(4)(e) or the recording of an
392 instrument that transfers title to a unit which is not
393 accompanied by a recorded assignment of developer rights in
394 favor of the grantee of such unit, whichever occurs first.

395

396 The developer is entitled to elect at least one member of the
397 board of administration of an association as long as the
398 developer holds for sale in the ordinary course of business at
399 least 5 percent, in condominiums with fewer than 500 units, and
400 2 percent, in condominiums with more than 500 units, of the
401 units in a condominium operated by the association. After the
402 developer relinquishes control of the association, the developer
403 may exercise the right to vote any developer-owned units in the
404 same manner as any other unit owner except for purposes of
405 reacquiring control of the association or selecting a the
406 majority of the members of the board of administration.

407 (4) At the time that unit owners other than the developer
408 elect a majority of the members of the board of administration
409 of an association, the developer or bulk-unit purchaser shall
410 relinquish control of the association, and the unit owners shall
411 accept control. Simultaneously, or for the purposes of paragraph
412 (c) not more than 90 days thereafter, the developer or bulk-unit
413 purchaser shall deliver to the association, at the developer's
414 or bulk-unit purchaser's expense, all property of the unit
415 owners and of the association which is held or controlled by the
416 developer or bulk-unit purchaser, including, but not limited to,
417 the following items, if applicable, as to each condominium



406496

418 operated by the association:

419 (a)1. The original or a photocopy of the recorded
420 declaration of condominium and all amendments thereto. If a
421 photocopy is provided, it must be certified by affidavit of the
422 developer, a bulk-unit purchaser, or an officer or agent of the
423 developer or bulk-unit purchaser as being a complete copy of the
424 actual recorded declaration.

425 2. A certified copy of the articles of incorporation of the
426 association or, if the association was created before ~~prior to~~
427 the effective date of this act and it is not incorporated,
428 copies of the documents creating the association.

429 3. A copy of the bylaws.

430 4. The minute books, including all minutes, and other books
431 and records of the association, if any.

432 5. Any house rules and regulations that have been adopted
433 ~~promulgated~~.

434 (b) Resignations of officers and members of the board of
435 administration who are required to resign because the developer
436 or bulk-unit purchaser is required to relinquish control of the
437 association.

438 (c) The financial records, including financial statements
439 of the association, and source documents from the incorporation
440 of the association through the date of turnover. The records
441 must be audited for the period from the incorporation of the
442 association or from the period covered by the last audit, if an
443 audit has been performed for each fiscal year since
444 incorporation, by an independent certified public accountant.
445 All financial statements must be prepared in accordance with
446 generally accepted accounting principles and must be audited in



406496

447 accordance with generally accepted auditing standards, as
448 prescribed by the Florida Board of Accountancy, pursuant to
449 chapter 473. The accountant performing the audit shall examine
450 to the extent necessary supporting documents and records,
451 including the cash disbursements and related paid invoices, to
452 determine whether ~~if~~ expenditures were for association purposes
453 and the billings, cash receipts, and related records to
454 determine whether ~~that~~ the developer or bulk-unit purchaser was
455 charged and paid the proper amounts of assessments.

456 (d) Association funds or control thereof.

457 (e) All tangible personal property that is property of the
458 association, which is represented by the developer or bulk-unit
459 purchaser to be part of the common elements or which is
460 ostensibly part of the common elements, and an inventory of that
461 property.

462 (f) A copy of the plans and specifications used ~~utilized~~ in
463 the construction or remodeling of improvements and the supplying
464 of equipment to the condominium and in the construction and
465 installation of all mechanical components serving the
466 improvements and the site with a certificate in affidavit form
467 of the developer, the bulk-unit purchaser, or the developer's or
468 bulk-unit purchaser's agent or an architect or engineer
469 authorized to practice in this state that such plans and
470 specifications represent, to the best of his or her knowledge
471 and belief, the actual plans and specifications used ~~utilized~~ in
472 the construction and improvement of the condominium property and
473 for the construction and installation of the mechanical
474 components serving the improvements. If the condominium property
475 has been declared a condominium more than 3 years after the



406496

476 completion of construction or remodeling of the improvements,
477 ~~the requirements of~~ this paragraph does ~~de~~ not apply.

478 (g) A list of the names and addresses of all contractors,
479 subcontractors, and suppliers used ~~utilized~~ in the construction
480 or remodeling of the improvements and in the landscaping of the
481 condominium or association property which the developer or bulk-
482 unit purchaser had knowledge of at any time in the development
483 of the condominium.

484 (h) Insurance policies.

485 (i) Copies of any certificates of occupancy that may have
486 been issued for the condominium property.

487 (j) Any other permits applicable to the condominium
488 property which have been issued by governmental bodies and are
489 in force or were issued within 1 year before ~~prior to~~ the date
490 the unit owners other than the developer or bulk-unit purchaser
491 took control of the association.

492 (k) All written warranties of the contractor,
493 subcontractors, suppliers, and manufacturers, if any, that are
494 still effective.

495 (l) A roster of unit owners and their addresses and
496 telephone numbers, if known, as shown on the developer's or
497 bulk-unit purchaser's records.

498 (m) Leases of the common elements and other leases to which
499 the association is a party.

500 (n) Employment contracts or service contracts in which the
501 association is one of the contracting parties or service
502 contracts in which the association or the unit owners have an
503 obligation or responsibility, directly or indirectly, to pay
504 some or all of the fee or charge of the person or persons



406496

505 performing the service.

506 (o) All other contracts to which the association is a
507 party.

508 (p) A report included in the official records, under seal
509 of an architect or engineer authorized to practice in this
510 state, attesting to required maintenance, useful life, and
511 replacement costs of the following applicable common elements
512 comprising a turnover inspection report:

- 513 1. Roof.
- 514 2. Structure.
- 515 3. Fireproofing and fire protection systems.
- 516 4. Elevators.
- 517 5. Heating and cooling systems.
- 518 6. Plumbing.
- 519 7. Electrical systems.
- 520 8. Swimming pool or spa and equipment.
- 521 9. Seawalls.
- 522 10. Pavement and parking areas.
- 523 11. Drainage systems.
- 524 12. Painting.
- 525 13. Irrigation systems.

526 (q) A copy of the certificate of a surveyor and mapper
527 recorded pursuant to s. 718.104(4)(e) or the recorded instrument
528 that transfers title to a unit in the condominium which is not
529 accompanied by a recorded assignment of developer or bulk-unit
530 purchaser rights in favor of the grantee of such unit, whichever
531 occurred first.

532 Section 10. Subsections (1) through (4) of section 718.302,
533 Florida Statutes, are amended to read:



406496

534 718.302 Agreements entered into by the association.-

535 (1) A ~~Any~~ grant or reservation made by a declaration,
536 lease, or other document, and a ~~any~~ contract made by an
537 association ~~before~~ ~~prior to~~ assumption of control of the
538 association by unit owners other than the developer, a bulk-unit
539 purchaser, or a lender-unit purchaser, which ~~that~~ provides for
540 operation, maintenance, or management of a condominium
541 association or property serving the unit owners of a condominium
542 must ~~shall~~ be fair and reasonable, and such grant, reservation,
543 or contract may be canceled by unit owners other than the
544 developer or a bulk-unit purchaser. A lender-unit purchaser may
545 not vote on cancellation of a grant, reservation, or contract
546 made by the association while the association is under control
547 of that lender-unit purchaser.÷

548 (a) If the association operates only one condominium and
549 the unit owners other than the developer, a bulk-unit purchaser,
550 or a lender-unit purchaser have assumed control of the
551 association, or if the unit owners other than the developer, a
552 bulk-unit purchaser, or a lender-unit purchaser own at least ~~not~~
553 ~~less than~~ 75 percent of the voting interests in the condominium,
554 the cancellation shall be by concurrence of the owners of at
555 least ~~not less than~~ 75 percent of the voting interests other
556 than the voting interests owned by the developer, a bulk-unit
557 purchaser, or a lender-unit purchaser. If a grant, reservation,
558 or contract is so canceled and the unit owners other than the
559 developer or a bulk-unit purchaser have not assumed control of
560 the association, the association shall make a new contract or
561 otherwise provide for maintenance, management, or operation in
562 lieu of the canceled obligation, at the direction of the owners



406496

563 of ~~not less than~~ a majority of the voting interests in the
564 condominium other than the voting interests owned by the
565 developer, a bulk-unit purchaser, or a lender-unit purchaser.

566 (b) If the association operates more than one condominium
567 and the unit owners other than the developer, a bulk-unit
568 purchaser, or a lender-unit purchaser have not assumed control
569 of the association, and if the unit owners other than the
570 developer or a bulk-unit purchaser own at least 75 percent of
571 the voting interests in a condominium operated by the
572 association, any grant, reservation, or contract for
573 maintenance, management, or operation of buildings containing
574 the units in that condominium or of improvements used only by
575 the unit owners of that condominium may be canceled by
576 concurrence of the owners of at least 75 percent of the voting
577 interests in the condominium other than the voting interests
578 owned by the developer or a bulk-unit purchaser. A ~~no~~ grant,
579 reservation, or contract for maintenance, management, or
580 operation of recreational areas or any other property serving
581 more than one condominium, and operated by more than one
582 association, may not be canceled except pursuant to paragraph
583 (d).

584 (c) If the association operates more than one condominium
585 and the unit owners other than the developer, a bulk-unit
586 purchaser, or a lender-unit purchaser have assumed control of
587 the association, the cancellation shall be by concurrence of the
588 owners of at least ~~not less than~~ 75 percent of the total number
589 of voting interests in all condominiums operated by the
590 association other than the voting interests owned by the
591 developer or a bulk-unit purchaser.



406496

592 (d) If the owners of units in a condominium have the right
593 to use property in common with owners of units in other
594 condominiums and those condominiums are operated by more than
595 one association, a no grant, reservation, or contract for
596 maintenance, management, or operation of the property serving
597 more than one condominium may not be canceled until the unit
598 owners other than the developer, a bulk-unit purchaser, or a
599 lender-unit purchaser have assumed control of all of the
600 associations operating the condominiums that are to be served by
601 the recreational area or other property, after which
602 cancellation may be effected by concurrence of the owners of at
603 least not less than 75 percent of the total number of voting
604 interests in those condominiums other than voting interests
605 owned by the developer, a bulk-unit purchaser, or a lender-unit
606 purchaser.

607 (2) A Any grant or reservation made by a declaration,
608 lease, or other document, or a any contract made by the
609 developer or association before ~~prior to the time when~~ unit
610 owners other than the developer or a bulk-unit purchaser elect a
611 majority of the board of administration, which grant,
612 reservation, or contract requires the association to purchase
613 condominium property or to lease condominium property to another
614 party, shall be deemed ratified unless rejected by a majority of
615 the voting interests of the unit owners other than the developer
616 or a bulk-unit purchaser within 18 months after the unit owners
617 other than the developer or a bulk-unit purchaser elect a
618 majority of the board of administration. A lender-unit purchaser
619 may not vote on cancellation of a grant, reservation, or
620 contract made by the association while the association is under



406496

621 control of that lender-unit purchaser. This subsection does not
622 apply to a any grant or reservation made by a declaration under
623 which ~~whereby~~ persons other than the developer or the
624 developer's or bulk-unit purchaser's heirs, assigns, affiliates,
625 directors, officers, or employees are granted the right to use
626 the condominium property, if so long as such persons are
627 obligated to pay at least, ~~at a minimum~~, a proportionate share
628 of the cost associated with such property.

629 (3) A Any grant or reservation made by a declaration,
630 lease, or other document, and a any contract made by an
631 association, whether before or after assumption of control of
632 the association by unit owners other than the developer, a bulk-
633 unit purchaser, or a lender-unit purchaser, which ~~that~~ provides
634 for operation, maintenance, or management of a condominium
635 association or property serving the unit owners of a condominium
636 may shall not ~~be in~~ conflict with the powers and duties of the
637 association or the rights of the unit owners as provided in this
638 chapter. This subsection is intended only as a clarification of
639 existing law.

640 (4) A Any grant or reservation made by a declaration,
641 lease, or other document, and a any contract made by an
642 association before ~~prior to~~ assumption of control of the
643 association by unit owners other than the developer, a bulk-unit
644 purchaser, or a lender-unit purchaser, must shall be fair and
645 reasonable.

646 Section 11. Subsections (3), (4), and (5) of section
647 718.303, Florida Statutes, are amended, and subsection (7) is
648 added to that section, to read:

649 718.303 Obligations of owners and occupants; remedies.-



406496

650 (3) The association may levy reasonable fines for the
651 failure of the owner of the unit or its occupant, licensee, or
652 invitee to comply with any provision of the declaration, the
653 association bylaws, or reasonable rules of the association. A
654 fine may not become a lien against a unit. A fine may be levied
655 by the board or its authorized designee on the basis of each day
656 of a continuing violation, with a single notice and opportunity
657 for hearing before an impartial committee as provided in
658 paragraph (b). However, the fine may not exceed \$100 per
659 violation, or \$1,000 in the aggregate.

660 (a) An association may suspend, for a reasonable period of
661 time, the right of a unit owner, or a unit owner's tenant,
662 guest, or invitee, to use the common elements, common
663 facilities, or any other association property for failure to
664 comply with any provision of the declaration, the association
665 bylaws, or reasonable rules of the association. This paragraph
666 does not apply to limited common elements intended to be used
667 only by that unit, common elements needed to access the unit,
668 utility services provided to the unit, parking spaces, or
669 elevators.

670 (b) A fine or suspension levied by the board of
671 administration or its authorized designee may not be imposed
672 unless the board ~~association~~ first provides at least 14 days'
673 written notice and an opportunity for a hearing to the unit
674 owner and, if applicable, its occupant, licensee, or invitee.
675 The hearing must be held before an impartial ~~a~~ committee of
676 other unit owners who are neither board members, ~~nor~~ persons
677 residing in a board member's household, the board's authorized
678 designee, nor persons residing in the household of the board's



406496

679 authorized designee. The role of the impartial committee is
680 limited to determining whether to confirm or reject the fine or
681 suspension levied by the board. If the impartial committee does
682 not agree, the fine or suspension may not be imposed.

683 (4) If a unit owner is more than 90 days delinquent in
684 paying a fee, fine, or other monetary obligation due to the
685 association, the association may suspend the right of the unit
686 owner or the unit's occupant, licensee, or invitee to use common
687 elements, common facilities, or any other association property
688 until the fee, fine, or other monetary obligation is paid in
689 full. This subsection does not apply to limited common elements
690 intended to be used only by that unit, common elements needed to
691 access the unit, utility services provided to the unit, parking
692 spaces, or elevators. The notice and hearing requirements under
693 subsection (3) do not apply to suspensions imposed under this
694 subsection.

695 (5) An association may suspend the voting rights of a unit
696 or member due to nonpayment of any fee, fine, or other monetary
697 obligation due to the association which is more than 90 days
698 delinquent. A voting interest or consent right allocated to a
699 unit or member which has been suspended by the association shall
700 be subtracted from ~~may not be counted towards~~ the total number
701 of voting interests in the association, which shall be reduced
702 by the number of suspended voting interests when calculating the
703 total percentage or number of all voting interests available to
704 take or approve any action, and the suspended voting interests
705 may not be considered for any purpose, including, but not
706 limited to, the percentage or number of voting interests
707 necessary to constitute a quorum, the percentage or number of



406496

708 voting interests required to conduct an election, or the
709 percentage or number of voting interests required to approve an
710 action under this chapter or pursuant to the declaration,
711 articles of incorporation, or bylaws. The suspension ends upon
712 full payment of all obligations currently due or overdue the
713 association. The notice and hearing requirements under
714 subsection (3) do not apply to a suspension imposed under this
715 subsection.

716 (7) The suspensions permitted by paragraph (3) (a) and
717 subsections (4) and (5) apply to a member and, when appropriate,
718 the member's tenants, guests, or invitees, even if the
719 delinquency or failure that resulted in the suspension arose
720 from less than all of the multiple units owned by the member.

721 Section 12. Subsection (1) of section 718.501, Florida
722 Statutes, is amended to read:

723 718.501 Authority, responsibility, and duties of Division
724 of Florida Condominiums, Timeshares, and Mobile Homes.—

725 (1) The division may enforce and ensure compliance with ~~the~~
726 ~~provisions~~ of this chapter and rules relating to the
727 development, construction, sale, lease, ownership, operation,
728 and management of residential condominium units. In performing
729 its duties, the division has complete jurisdiction to
730 investigate complaints and enforce compliance with respect to
731 associations that are still under the control of the developer,
732 the control of a bulk-unit purchaser or lender-unit purchaser,
733 or the control of a bulk assignee or bulk buyer pursuant to part
734 VII of this chapter and complaints against developers, bulk-unit
735 purchasers, lender-unit purchasers, bulk assignees, or bulk
736 buyers involving improper turnover or failure to turnover,



406496

737 pursuant to s. 718.301. However, after turnover has occurred,
738 the division has jurisdiction to investigate only complaints
739 related ~~only~~ to financial issues, elections, and unit owner
740 access to association records pursuant to s. 718.111(12).

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

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

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

759 (c) For the purpose of any investigation under this
760 chapter, the division director or any officer or employee
761 designated by the division director may administer oaths or
762 affirmations, subpoena witnesses and compel their attendance,
763 take evidence, and require the production of any matter that
764 ~~which~~ is relevant to the investigation, including the existence,
765 description, nature, custody, condition, and location of any



406496

766 books, documents, or other tangible things and the identity and
767 location of persons having knowledge of relevant facts or any
768 other matter reasonably calculated to lead to the discovery of
769 material evidence. Upon the failure of ~~by~~ a person to obey a
770 subpoena or to answer questions propounded by the investigating
771 officer and upon reasonable notice to all affected persons, the
772 division may apply to the circuit court for an order compelling
773 compliance.

774 (d) Notwithstanding any remedies available to unit owners
775 and associations, if the division has reasonable cause to
776 believe that a violation of ~~any provision of~~ this chapter or a
777 related rule has occurred, the division may institute
778 enforcement proceedings in its own name against any developer,
779 bulk-unit purchaser, lender-unit purchaser, bulk assignee, bulk
780 buyer, association, officer, or member of the board of
781 administration, or his or her ~~its~~ assignees or agents, as
782 follows:

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

788 2. The division may issue an order requiring the developer,
789 bulk-unit purchaser, lender-unit purchaser, bulk assignee, bulk
790 buyer, association, developer-designated officer, or developer-
791 designated member of the board of administration, or his or her
792 ~~developer-designated~~ assignees or agents, the ~~bulk assignee-~~
793 ~~designated assignees or agents, bulk buyer-designated assignees~~
794 ~~or agents,~~ community association manager, or the ~~community~~



406496

795 ~~association~~ management firm to cease and desist from the
796 unlawful practice and take such affirmative action as in the
797 judgment of the division to carry out the purposes of this
798 chapter. If the division finds that a developer, bulk-unit
799 purchaser, lender-unit purchaser, bulk assignee, bulk buyer,
800 association, officer, or member of the board of administration,
801 or his or her ~~its~~ assignees or agents, is violating or is about
802 to violate ~~any provision of~~ this chapter, any rule adopted or
803 order issued by the division, or any written agreement entered
804 into with the division, ~~and~~ the violation presents an immediate
805 danger to the public requiring an immediate final order, it may
806 issue an emergency cease and desist order reciting with
807 particularity the facts underlying such findings. The emergency
808 cease and desist order is effective for 90 days. If the division
809 begins nonemergency cease and desist proceedings, the emergency
810 cease and desist order remains effective until the conclusion of
811 the proceedings under ss. 120.569 and 120.57.

812 3. If a developer, bulk-unit purchaser, lender-unit
813 purchaser, bulk assignee, or bulk buyer, ~~and~~ fails to pay ~~any~~
814 restitution determined by the division to be owed ~~and, plus~~ any
815 accrued interest charged at the highest rate permitted by law,
816 within 30 days after expiration of any appellate time period of
817 a final order requiring payment of restitution or the conclusion
818 of any appeal thereof, ~~whichever is later,~~ the division shall
819 ~~must~~ bring an action in circuit or county court on behalf of any
820 association, class of unit owners, lessees, or purchasers for
821 restitution, declaratory relief, injunctive relief, or any other
822 available remedy. The division may also temporarily revoke its
823 acceptance of the filing for the developer, bulk-unit purchaser,



406496

824 or lender-unit purchaser, to which the restitution relates until
825 payment of restitution is made.

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

836 5. The division may apply to the circuit court for an order
837 of restitution under which ~~whereby~~ the defendant in an action
838 brought pursuant to subparagraph 4. is ordered to make
839 restitution of those sums shown by the division to have been
840 obtained by the defendant in violation of this chapter. At the
841 option of the court, such restitution is payable to the
842 conservator or receiver appointed pursuant to subparagraph 4. or
843 directly to the persons whose funds or assets were obtained in
844 violation of this chapter.

845 6. The division may impose a civil penalty against a
846 developer, bulk-unit purchaser, lender-unit purchaser, bulk
847 assignee, ~~or~~ bulk buyer, or association, or its assignee or
848 agent, for a ~~any~~ violation of this chapter or a related rule.
849 The division may impose a civil penalty individually against an
850 officer or board member who willfully and knowingly violates ~~a~~
851 ~~provision of~~ this chapter, an adopted rule, or a final order of
852 the division; may order the removal of such individual as an



406496

853 officer or from the board of administration or as an officer of
854 the association; and may prohibit such individual from serving
855 as an officer or on the board of a community association for a
856 period of time. The term "willfully and knowingly" means that
857 the division informed the officer or board member that his or
858 her action or intended action violates this chapter, a rule
859 adopted under this chapter, or a final order of the division and
860 that the officer or board member refused to comply with ~~the~~
861 ~~requirements of~~ this chapter, a rule adopted under this chapter,
862 or a final order of the division. ~~The division,~~ Before
863 initiating formal agency action under chapter 120, the division
864 must afford the officer or board member an opportunity to
865 voluntarily comply, and an officer or board member who complies
866 within 10 days is not subject to a civil penalty. A penalty may
867 be imposed on the basis of each day of continuing violation, but
868 the penalty for any offense may not exceed \$5,000. ~~By January 1,~~
869 ~~1998,~~ The division shall adopt, by rule, penalty guidelines
870 applicable to possible violations or to categories of violations
871 of this chapter or rules adopted by the division. The guidelines
872 must specify a meaningful range of civil penalties for each such
873 violation of the statute and rules and must be based upon the
874 harm caused by the violation, the repetition of the violation,
875 and upon such other factors deemed relevant by the division. ~~For~~
876 ~~example,~~ The division may consider whether the violations were
877 committed by a developer, bulk-unit purchaser, lender-unit
878 purchaser, bulk assignee, or bulk buyer, or owner-controlled
879 association, the size of the association, and other factors. The
880 guidelines must designate the possible mitigating or aggravating
881 circumstances that justify a departure from the range of



406496

882 penalties provided by the rules. It is the legislative intent
883 that minor violations be distinguished from those that ~~which~~
884 endanger the health, safety, or welfare of ~~the~~ condominium
885 residents or other persons and that such guidelines provide
886 reasonable and meaningful notice to the public of likely
887 penalties that may be imposed for proscribed conduct. This
888 subsection does not limit the ability of the division to
889 informally dispose of administrative actions or complaints by
890 stipulation, agreed settlement, or consent order. All amounts
891 collected shall be deposited with the Chief Financial Officer to
892 the credit of the Division of Florida Condominiums, Timeshares,
893 and Mobile Homes Trust Fund. If a developer, bulk-unit
894 purchaser, lender-unit purchaser, bulk assignee, or bulk buyer
895 fails to pay the civil penalty and the amount deemed to be owed
896 to the association, the division shall issue an order directing
897 that such developer, bulk-unit purchaser, lender-unit purchaser,
898 bulk assignee, or bulk buyer cease and desist from further
899 operation until such time as the civil penalty is paid or may
900 pursue enforcement of the penalty in a court of competent
901 jurisdiction. If an association fails to pay the civil penalty,
902 the division shall pursue enforcement in a court of competent
903 jurisdiction, and the order imposing the civil penalty or the
904 cease and desist order is not effective until 20 days after the
905 date of such order. Any action commenced by the division shall
906 be brought in the county in which the division has its executive
907 offices or in the county where the violation occurred.

908 7. If a unit owner presents the division with proof that
909 the unit owner has requested access to official records in
910 writing by certified mail, and that after 10 days the unit owner



406496

911 again made the same request for access to official records in
912 writing by certified mail, and that more than 10 days has
913 elapsed since the second request and the association has still
914 failed or refused to provide access to official records as
915 required by this chapter, the division shall issue a subpoena
916 requiring production of the requested records where the records
917 are kept pursuant to s. 718.112.

918 8. In addition to subparagraph 6., the division may seek
919 the imposition of a civil penalty through the circuit court for
920 any violation for which the division may issue a notice to show
921 cause under paragraph (r). The civil penalty shall be at least
922 \$500 but no more than \$5,000 for each violation. The court may
923 also award to the prevailing party court costs and reasonable
924 attorney ~~attorney's~~ fees and, if the division prevails, may also
925 award reasonable costs of investigation.

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

930 (f) The division may adopt rules to administer and enforce
931 ~~the provisions of~~ this chapter.

932 (g) The division shall establish procedures for providing
933 notice to an association and the developer, bulk-unit purchaser,
934 lender-unit purchaser, bulk assignee, or bulk buyer during the
935 period in which the developer, bulk-unit purchaser, lender-unit
936 purchaser, bulk assignee, or bulk buyer controls the association
937 if the division is considering the issuance of a declaratory
938 statement with respect to the declaration of condominium or any
939 related document governing such condominium community.



406496

940 (h) The division shall furnish each association that pays
941 the fees required by paragraph (2) (a) a copy of this chapter, as
942 amended, and the rules adopted thereto on an annual basis.

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

947 (j) The division shall provide training and educational
948 programs for condominium association board members and unit
949 owners. The training may, at ~~in~~ the division's discretion,
950 include web-based electronic media, ~~and~~ live training and
951 seminars in various locations throughout the state. The division
952 may review and approve education and training programs for board
953 members and unit owners offered by providers, and shall maintain
954 a current list of approved programs and providers, and shall
955 make such list available to board members and unit owners in a
956 reasonable and cost-effective manner.

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

959 (l) The division shall develop a program to certify both
960 volunteer and paid mediators to provide mediation of condominium
961 disputes. Upon request, the division shall provide, ~~upon~~
962 ~~request,~~ a list of such mediators to any association, unit
963 owner, or other participant in arbitration proceedings under s.
964 718.1255 requesting a copy of the list. The division shall
965 include on the list of volunteer mediators only the names of
966 individuals ~~persons~~ who have received at least 20 hours of
967 training in mediation techniques or who have mediated at least
968 20 disputes. In order to become initially certified by the



406496

969 division, paid mediators must be certified by the Supreme Court
970 to mediate court cases in county or circuit courts. However, the
971 division may adopt, by rule, additional factors for the
972 certification of paid mediators, which must be related to
973 experience, education, or background. In order to continue to be
974 certified, an individual ~~Any person~~ initially certified as a
975 paid mediator by the division must, ~~in order to continue to be~~
976 ~~certified,~~ comply with the factors or requirements adopted by
977 rule.

978 (m) If a complaint is made, the division shall ~~must~~ conduct
979 its inquiry with due regard for the interests of the affected
980 parties. Within 30 days after receipt of a complaint, the
981 division shall acknowledge the complaint in writing and notify
982 the complainant as to whether the complaint is within the
983 jurisdiction of the division and whether additional information
984 is needed by the division from the complainant. The division
985 shall conduct its investigation and, within 90 days after
986 receipt of the original complaint or of timely requested
987 additional information, take action upon the complaint. However,
988 the failure to complete the investigation within 90 days does
989 not prevent the division from continuing the investigation,
990 accepting or considering evidence obtained or received after 90
991 days, or taking administrative action if reasonable cause exists
992 to believe that a violation of this chapter or a rule has
993 occurred. If an investigation is not completed within the time
994 limits established in this paragraph, the division shall, on a
995 monthly basis, notify the complainant in writing of the status
996 of the investigation. When reporting its action to the
997 complainant, the division shall inform the complainant of any



406496

998 right to a hearing pursuant to ss. 120.569 and 120.57.

999 (n) Condominium association directors, officers, and
1000 employees; condominium developers; bulk-unit purchasers, lender-
1001 unit purchasers, bulk assignees, bulk buyers, and community
1002 association managers; and community association management firms
1003 have an ongoing duty to reasonably cooperate with the division
1004 in any investigation pursuant to this section. The division
1005 shall refer to local law enforcement authorities any person who
1006 ~~whom~~ the division believes has altered, destroyed, concealed, or
1007 removed any record, document, or thing required to be kept or
1008 maintained by this chapter with the purpose to impair its verity
1009 or availability in the department's investigation.

1010 (o) The division may:

- 1011 1. Contract with agencies in this state or other
1012 jurisdictions to perform investigative functions; or
1013 2. Accept grants-in-aid from any source.

1014 (p) The division shall cooperate with similar agencies in
1015 other jurisdictions to establish uniform filing procedures and
1016 forms, public offering statements, advertising standards, and
1017 rules and common administrative practices.

1018 (q) The division shall consider notice to a developer,
1019 bulk-unit purchaser, lender-unit purchaser, bulk assignee, or
1020 bulk buyer to be complete when it is delivered to the address of
1021 the developer, bulk-unit purchaser, lender-unit purchaser, bulk
1022 assignee, or bulk buyer currently on file with the division.

1023 (r) In addition to its enforcement authority, the division
1024 may issue a notice to show cause, which must provide for a
1025 hearing, upon written request, in accordance with chapter 120.

1026 (s) The division shall submit to the Governor, the



406496

1027 President of the Senate, the Speaker of the House of
1028 Representatives, and the chairs of the legislative
1029 appropriations committees an annual report that includes, but
1030 need not be limited to, the number of training programs provided
1031 for condominium association board members and unit owners;; the
1032 number of complaints received, by type;; the number and percent
1033 of complaints acknowledged in writing within 30 days and the
1034 number and percent of investigations acted upon within 90 days
1035 in accordance with paragraph (m);; and the number of
1036 investigations exceeding the 90-day requirement. The annual
1037 report must also include an evaluation of the division's core
1038 business processes and make recommendations for improvements,
1039 including statutory changes. The report shall be submitted by
1040 September 30 following the end of the fiscal year.

1041 Section 13. Section 718.709, Florida Statutes, is created
1042 to read:

1043 718.709 Applicability.—Sections 718.701-718.708, relating
1044 to the Distressed Condominium Relief Act, apply to title to
1045 units acquired on or after July 1, 2010, but before July 1,
1046 2016.

1047 Section 14. Part VIII of chapter 718, Florida Statutes,
1048 consisting of sections 718.801-718.813, is created to read:

1049 PART VIII

1050 BULK-UNIT PURCHASERS AND LENDER-UNIT PURCHASERS

1051 718.801 Legislative intent.—The Legislature declares that
1052 it is the public policy of this state to protect the interests
1053 of developers, lenders, unit owners, and condominium
1054 associations with regard to bulk-unit purchasers or lender-unit
1055 purchasers of condominium units and that there is a need to



406496

1056 balance such interests by limiting the applicability of the
1057 Distressed Condominium Relief Act. Notwithstanding the
1058 limitation, the Distressed Condominium Relief Act applies to
1059 title acquired on or after July 1, 2010, but before July 1,
1060 2016.

1061 718.802 Definitions.—As used in this part, the term:

1062 (1) "Bulk assignee" means a person who is not a bulk buyer
1063 and who:

1064 (a) Acquires more than seven condominium parcels in a
1065 single condominium;

1066 (b) Receives an assignment of any of the developer rights,
1067 other than or in addition to those rights described in
1068 subsection (3), as set forth in the declaration of condominium
1069 or this chapter:

1070 1. By a written instrument recorded as part of or as an
1071 exhibit of the deed;

1072 2. By a separate instrument recorded in the public records
1073 of the county in which the condominium is located; or

1074 3. Pursuant to a final judgment or certificate of title
1075 issued in favor of a purchaser at a foreclosure sale; and

1076 (c) Acquired condominium parcels on or after July 1, 2010,
1077 but before July 1, 2016. The date of such acquisition shall be
1078 determined by the date of recording a deed or other instrument
1079 of conveyance for such parcels in the public records of the
1080 county in which the condominium is located, or by the date of
1081 issuing a certificate of title in a foreclosure proceeding with
1082 respect to such condominium parcels.

1083
1084 A mortgagee or its assignee may not be deemed a bulk assignee or



406496

1085 developer by reason of the acquisition of condominium units and
1086 receipt of an assignment of some or all of a developer's rights
1087 unless the mortgage or its assignee exercises any of the
1088 developer rights other than those described in subsection (3).

1089 (2) "Bulk-unit purchaser" means a person who acquires title
1090 to the greater of at least eight units or 20 percent of the
1091 units that ultimately will be operated by the same association,
1092 as provided in the declaration, articles of incorporation, or
1093 bylaws as originally recorded. Multiple bulk-unit purchasers may
1094 be members of an association simultaneously or successively.
1095 There may be one or more bulk-unit purchasers while the
1096 developer still owns units operated by the association. A person
1097 who acquires title to units or timeshare interests in a
1098 condominium, which units or timeshare interests are or
1099 ultimately will be included in a timeshare plan governed by
1100 chapter 721, may elect to be a bulk-unit purchaser pursuant to
1101 s. 718.813. The term does not include a lender-unit purchaser.
1102 Further, the term does not include an acquirer of units if any
1103 transfer of title to the acquirer is made:

1104 (a) With intent to defraud or materially harm a purchaser,
1105 a unit owner, or the association;

1106 (b) Where the acquirer is a person or limited liability
1107 company that would be an insider, as defined in s. 726.102, of
1108 the bulk-unit purchaser or of the developer; or

1109 (c) As a fraudulent transfer under chapter 726.

1110 (3) "Bulk buyer" means a person who acquired condominium
1111 parcels on or after July 1, 2010, but before July 1, 2016, and
1112 the date of acquisition shall be determined in the same manner
1113 as in subsection (1). Further, the term means a person who



406496

1114 acquires more than seven condominium parcels in a single
1115 condominium but who does not receive an assignment of any
1116 developer rights or receives only some or all of the following
1117 rights:

1118 (a) The right to conduct sales, leasing, and marketing
1119 activities within the condominium.

1120 (b) The right to be exempt from the payment of working
1121 capital contributions to the condominium association arising out
1122 of, or in connection with, the bulk buyer's acquisition of the
1123 units.

1124 (c) The right to be exempt from any rights of first refusal
1125 which may be held by the condominium association and would
1126 otherwise be applicable to subsequent transfers of title from
1127 the bulk buyer to a third-party purchaser concerning one or more
1128 units.

1129 (4) "Lender-unit purchaser" means a person, or the person's
1130 successors, assigns, or wholly owned subsidiaries, who holds a
1131 mortgage from a developer or from a bulk-unit purchaser on the
1132 greater of at least eight units or 20 percent of the units that,
1133 as provided in the declaration, articles of incorporation, or
1134 bylaws as originally recorded, ultimately will be operated by
1135 the same association; who subsequently obtains title to such
1136 units through foreclosure or deed in lieu of foreclosure; and
1137 who makes the election to become a lender-unit purchaser
1138 pursuant to 718.808(4). However, a mortgagee or its wholly owned
1139 subsidiary that acquires and sells units to one or more bulk-
1140 unit purchasers is not a developer or a lender-unit purchaser
1141 with respect to the sale.

1142 718.803 Exercise of rights.-



406496

1143 (1) A bulk-unit purchaser may exercise only the following
1144 developer rights, provided such rights are contained in the
1145 declaration:

1146 (a) The right to conduct sales, leasing, and marketing
1147 activities within the condominium, including the use of the
1148 sales and leasing office.

1149 (b) The right to assign limited common elements and use
1150 rights to common elements and association property which were
1151 not assigned before the bulk-unit purchaser acquired title to
1152 the units. Such rights may include, without limitation, the
1153 rights to garages, parking spaces, storage areas, and cabanas.
1154 If there is more than one bulk-unit purchaser, this right must
1155 be established in a written assignment from the developer which
1156 specifies the bulk-unit purchaser who has such a right as to
1157 specified limited common elements, common elements, and
1158 association property.

1159 (c) For a phase condominium, the right to add phases.

1160 (2) If the initial purchaser of a unit from the developer
1161 is required to make a working capital contribution to the
1162 association, a bulk-unit purchaser shall pay a working capital
1163 contribution to the association, which must be calculated in the
1164 same manner for each unit acquired, upon the earlier of:

1165 (a) Sale of a unit by the bulk-unit purchaser to a third
1166 party other than the bulk-unit purchaser; or

1167 (b) Five years from the date of acquisition of title to a
1168 unit by the bulk-unit purchaser.

1169 (3) If a bulk-unit purchaser exercises developer rights
1170 other than those specified in subsection (1), he or she is no
1171 longer deemed to be a bulk-unit purchaser, and this part does



406496

1172 not apply to such person.

1173 (4) Except as set forth in this part, a lender-unit
1174 purchaser may exercise any developer rights that the lender-unit
1175 purchaser acquires.

1176 718.804 Compliance.—A bulk-unit purchaser and a lender-unit
1177 purchaser shall comply with all applicable requirements of s.
1178 718.202 and part V of this chapter in connection with any units
1179 that they own or sell.

1180 718.805 Voting rights.—

1181 (1) For the first 2 fiscal years following the first
1182 conveyance of a unit to a bulk-unit purchaser or lender-unit
1183 purchaser, the bulk-unit purchaser or lender-unit purchaser may
1184 vote the voting interests allocated to his or her units to waive
1185 reserves or reduce the funding of reserves. After these 2 fiscal
1186 years, the bulk-unit purchaser or lender-unit purchaser may not
1187 vote his or her voting interests to waive reserves or reduce the
1188 funding of reserves until the bulk-unit purchaser or lender-unit
1189 purchaser holds less than a majority of the voting interests in
1190 the association.

1191 (2) A bulk-unit purchaser or lender-unit purchaser may not
1192 transfer his or her right to vote to waive reserves or reduce
1193 the funding of reserves to other bulk-unit purchasers or lender-
1194 unit purchasers to extend the time period in subsection (1).

1195 718.806 Assessment liability; election of directors.—

1196 (1) BULK-UNIT PURCHASER ASSESSMENT LIABILITY.—A bulk-unit
1197 purchaser is liable for all assessments on his or her units
1198 which become due while the bulk-unit purchaser holds title to
1199 such units. Additionally, the bulk-unit purchaser is jointly and
1200 severally liable with the previous owner for all unpaid regular



406496

1201 periodic assessments and special assessments that became due
1202 before the acquisition of title, for all other monetary
1203 obligations accrued which are secured by the association's lien,
1204 and for all costs advanced by the association for the
1205 maintenance and repair of the units acquired by the bulk-unit
1206 purchaser.

1207 (2) LENDER-UNIT PURCHASER ASSESSMENT LIABILITY.—The
1208 liability of a lender-unit purchaser or his or her successors or
1209 assignees for the units that the lender-unit purchaser owns is
1210 limited to the lesser of:

1211 (a) The units' unpaid common expenses and the regular
1212 periodic assessments that accrued or became due during the 12
1213 months immediately preceding the lender-unit purchaser's
1214 acquisition of title and for which payment in full has not been
1215 received by the association; or

1216 (b) One percent of the original mortgage debt.

1217
1218 The lender-unit purchaser acquiring title must comply with s.
1219 718.116(1) (c).

1220 (3) DIRECTOR ELECTED BY BULK-UNIT PURCHASER.—A director who
1221 has been elected or appointed by a bulk-unit purchaser is
1222 automatically suspended from board service for 30 days following
1223 the failure of the bulk-unit purchaser to timely pay monetary
1224 obligations on a unit the bulk-unit purchaser owns. The
1225 remaining directors may temporarily fill the vacancy created by
1226 the suspension. Once the bulk-unit purchaser has cured all
1227 outstanding delinquencies on the unit, the suspended director
1228 shall replace the temporary appointee and resume service on the
1229 board for the unexpired term.



406496

1230 718.807 Amendments and material alterations.-
1231 (1) The following amendments or alterations may not go into
1232 effect unless approved by a majority vote of unit owners other
1233 than the developer, a bulk-unit purchaser, or a lender-unit
1234 purchaser:
1235 (a) An amendment described in s. 718.110(4) or (8).
1236 (b) An amendment creating, changing, or terminating leasing
1237 restrictions.
1238 (c) An amendment of the declaration pertaining to the
1239 condominium's status as housing for older persons.
1240 (d) An amendment pursuant to s. 718.110(14) or an amendment
1241 that otherwise reclassifies a portion of the common elements as
1242 a limited common element or that authorizes the association to
1243 change the limited common elements assigned to any unit.
1244 (e) Material alterations or substantial additions to the
1245 common elements or association property any time one of the
1246 following owns a percentage of voting interests equal to or
1247 greater than the percentage required to approve the amendment:
1248 1. A bulk-unit purchaser;
1249 2. A lender-unit purchaser;
1250 3. The developer and a bulk-unit purchaser;
1251 4. The developer and a lender-unit purchaser; or
1252 5. A bulk-unit purchaser and a lender-unit purchaser.
1253 (2) Notwithstanding subsection (1), consent of the
1254 developer, a bulk-unit purchaser, or a lender-unit purchaser is
1255 required for an amendment that would otherwise require the
1256 approval of such voting interests based upon the requirements of
1257 the declaration, articles of incorporation, or bylaws or s.
1258 718.110 or s. 718.113.



406496

1259 718.808 Warranties and disclosures.-

1260 (1) As the seller, a bulk-unit purchaser or lender-unit
1261 purchaser is deemed to have granted an implied warranty of
1262 fitness and merchantability to a purchaser of each unit sold for
1263 a period of 3 years, which begins on the date of the completion
1264 of repairs or improvements that the bulk-unit purchaser or
1265 lender-unit purchaser makes to the unit, common elements, or
1266 limited common elements. The bulk-unit purchaser or lender-unit
1267 purchaser is not deemed to have granted a warranty on
1268 improvements, repairs, or alterations to the condominium which
1269 he or she did not undertake.

1270 (2) The statute of limitations in s. 718.203 is tolled
1271 while the bulk-unit purchaser begins the process of appointing
1272 or electing a majority of the board of administration.

1273 (3) As the seller, the bulk-unit purchaser shall include
1274 the following disclosure to purchasers in conspicuous type on
1275 the first page of the sales contract:

1276
1277 SELLER IS A BULK-UNIT PURCHASER UNDER THE CONDOMINIUM ACT.
1278 SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE
1279 UNDER THE CONDOMINIUM ACT.

1280
1281 (4) A mortgagee who acquires units may elect to become a
1282 lender-unit purchaser by providing written notice of the
1283 election to the association addressed to the registered agent at
1284 the address specified in the records of the Department of State.
1285 The notice shall be delivered within the time period ending upon
1286 the earliest of:

1287 (a) The date on which the mortgagee exercises any developer



406496

1288 rights other than the developer rights described in s.
1289 718.803(1) (a);
1290 (b) Before the sale of a unit by the mortgagee; or
1291 (c) One hundred eighty days after the recording of the
1292 certificate of title or of the deed in lieu of foreclosure if
1293 the mortgagee acquired the units by foreclosure or by deed in
1294 lieu of foreclosure.
1295 (5) As the seller, the lender-unit purchaser shall include
1296 the following disclosure to purchasers in conspicuous type on
1297 the first page of the sales contract:
1298
1299 SELLER IS A LENDER-UNIT PURCHASER UNDER THE CONDOMINIUM ACT.
1300 SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE
1301 UNDER THE CONDOMINIUM ACT. SELLER TOOK TITLE TO THE UNIT(S)
1302 BEING SOLD TO PURCHASER BY FORECLOSURE OR DEED IN LIEU OF
1303 FORECLOSURE.
1304
1305 (6) (a) At or before the signing of a contract to sell a
1306 unit, the bulk-unit purchaser and the lender-unit purchaser must
1307 provide a condition report that complies with s. 718.616(2) and
1308 (3) and this section to the prospective purchaser and must
1309 obtain verification of delivery of such condition report. A
1310 condition report is not required in connection with a sale to a
1311 bulk-unit purchaser or in connection with a deed in lieu of
1312 foreclosure to a lender-unit purchaser. A mortgagee is not
1313 required to deliver to a bulk-unit purchaser a condition report
1314 even if the mortgagee acquires and transfers developer rights to
1315 such bulk-unit purchaser.
1316 (b) The condition report must include a reasonably detailed



406496

1317 description of the repairs or replacements necessary to cure
1318 defective construction identified in the condition report.

1319 (c) If, during the course of preparing the condition
1320 report, the architect or engineer becomes aware of a component
1321 that violates an applicable building code or federal or state
1322 law or that deviates from the building plans approved by the
1323 permitting authority, the architect or engineer shall disclose
1324 such information in the condition report. The architect or
1325 engineer shall make written inquiry to the applicable local
1326 government authority of any building code violations and shall
1327 include in the condition report any of the authority's responses
1328 or its failure to respond.

1329 (d) The condition report shall be prepared before the bulk-
1330 unit purchaser or the lender-unit purchaser enters into his or
1331 her first sales contract, but the condition report may not be
1332 prepared more than 6 months before the first sales contract is
1333 agreed upon. If the bulk-unit purchaser or lender-unit purchaser
1334 remains engaged in selling units, the condition report shall be
1335 updated no later than 1 year after the closing of the first
1336 sales contract and each year thereafter.

1337 (e) If a bulk-unit purchaser or lender-unit purchaser fails
1338 to provide the condition report in accordance with this section,
1339 the bulk-unit purchaser or lender-unit purchaser is deemed to
1340 grant implied warranties of fitness and merchantability which
1341 are not limited to the construction, improvements, or repairs
1342 that he or she undertakes to the units, common elements, or
1343 limited common elements.

1344 718.809 Joint and several liability.—For purposes of this
1345 chapter, if there are multiple bulk-unit purchasers within the



406496

1346 same association, the units owned by the multiple bulk-unit
1347 purchasers and the rights of the bulk-unit purchasers shall be
1348 aggregated as if there were only one bulk-unit purchaser. Each
1349 bulk-unit purchaser is jointly and severally liable with his or
1350 her predecessor bulk-unit purchasers for compliance with this
1351 chapter.

1352 718.810 Construction disputes.—A board of administration
1353 composed of a majority of directors elected or appointed by a
1354 bulk-unit purchaser may not resolve a construction dispute that
1355 is subject to chapter 558 unless such resolution is approved by
1356 a majority of the voting interests of the unit owners other than
1357 the developer and a bulk-unit purchaser.

1358 718.811 Noncompliance.—A bulk-unit purchaser or a lender-
1359 unit purchaser who fails to substantially comply with the
1360 requirements of this chapter pertaining to the obligations and
1361 rights of bulk-unit purchasers and lender-unit purchasers
1362 forfeits all protections or exemptions provided under the
1363 Condominium Act.

1364 718.812 Documents to be delivered upon turnover.—If a bulk-
1365 unit purchaser elects a majority of the board of administration
1366 and the unit owners other than the bulk-unit purchaser elect a
1367 majority, the bulk-unit purchaser must deliver all of the items
1368 specified in s. 718.301(4) to the association. However, the
1369 bulk-unit purchaser is not required to deliver items that were
1370 never in the possession of the bulk-unit purchaser. In
1371 conjunction with the acquisition of units, the bulk-unit
1372 purchaser shall undertake a good faith effort to obtain the
1373 items specified in s. 718.301(4) which must be delivered to the
1374 association. If the bulk-unit purchaser cannot obtain such



406496

1375 items, the bulk-unit purchaser must deliver a certificate in
1376 writing to the association which names or describes items that
1377 were not obtainable by the bulk-unit purchaser and which
1378 describes the good faith efforts that were undertaken to obtain
1379 the items. Delivery of the certificate relieves the bulk-unit
1380 purchaser of his or her responsibility under s. 718.301 to
1381 deliver the documents and materials referenced in the
1382 certificate. The responsibility of the bulk-unit purchaser to
1383 conduct the audit required by s. 718.301(4)(c) begins on the
1384 date the bulk-unit purchaser elects or appoints a majority of
1385 the members of the board of administration and ends on the date
1386 the bulk-unit purchaser no longer controls the board.

1387 718.813 Timeshare Condominiums.—With respect to the
1388 acquisition of title to units or timeshare interests in a
1389 condominium, which units or timeshare interests are or
1390 ultimately will be included in a timeshare plan governed by
1391 chapter 721:

1392 (1) Any person otherwise qualified to be a bulk-unit
1393 purchaser pursuant to s. 718.802 is not a bulk-unit purchaser
1394 unless that person makes an election to become a bulk-unit
1395 purchaser by providing notice to the association addressed to
1396 the registered agent at the address specified in the records of
1397 the Department of State. The notice shall be delivered within
1398 the time period ending upon the earliest of:

1399 (a) The date on which the person exercises any developer
1400 rights other than the developer rights described in s.
1401 718.803(1)(a);

1402 (b) The sale of any unit or timeshare interest by the
1403 person; or



406496

1404 (c) One hundred eighty days after the recording of the deed
1405 or other instrument of conveyance by which the person acquired
1406 the units or timeshare interests.

1407 (2) If a person has made an election to be a bulk-unit
1408 purchaser pursuant to subsection (1), the bulk-unit purchaser,
1409 when selling units or timeshare interests, shall include the
1410 following disclosure to purchasers in conspicuous type on the
1411 first page of the contract for sale of units or timeshare
1412 interests:

1413
1414 SELLER IS A BULK-UNIT PURCHASER UNDER THE CONDOMINIUM ACT.
1415 SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE
1416 UNDER THE CONDOMINIUM.

1417
1418 Section 15. Paragraph (a) of subsection (2) of section
1419 719.104, Florida Statutes, is amended to read:

1420 719.104 Cooperatives; access to units; records; financial
1421 reports; assessments; purchase of leases.-

1422 (2) OFFICIAL RECORDS.-

1423 (a) From the inception of the association, the association
1424 shall maintain a copy of each of the following, where
1425 applicable, which shall constitute the official records of the
1426 association:

1427 1. The plans, permits, warranties, and other items provided
1428 by the developer pursuant to s. 719.301(4).

1429 2. A photocopy of the cooperative documents.

1430 3. A copy of the current rules of the association.

1431 4. A book or books containing the minutes of all meetings
1432 of the association, of the board of directors, and of the unit



406496

1433 owners, which minutes shall be retained for a period of not less
1434 than 7 years.

1435 5. A current roster of all unit owners and their mailing
1436 addresses, unit identifications, voting certifications, and, if
1437 known, telephone numbers. The association shall also maintain
1438 the electronic mailing addresses and the numbers designated by
1439 unit owners for receiving notice sent by electronic transmission
1440 of those unit owners consenting to receive notice by electronic
1441 transmission. The electronic mailing addresses and numbers
1442 provided by unit owners to receive notice by electronic
1443 transmission shall be removed from association records when
1444 consent to receive notice by electronic transmission is revoked.
1445 However, the association is not liable for an erroneous
1446 disclosure of the electronic mail address or the number for
1447 receiving electronic transmission of notices.

1448 6. All current insurance policies of the association.

1449 7. A current copy of any management agreement, lease, or
1450 other contract to which the association is a party or under
1451 which the association or the unit owners have an obligation or
1452 responsibility.

1453 8. Bills of sale or transfer for all property owned by the
1454 association.

1455 9. Accounting records for the association and separate
1456 accounting records for each unit it operates, according to good
1457 accounting practices. All accounting records shall be maintained
1458 for a period of not less than 7 years. The accounting records
1459 shall include, but not be limited to:

1460 a. Accurate, itemized, and detailed records of all receipts
1461 and expenditures.



406496

1462 b. A current account and a monthly, bimonthly, or quarterly
1463 statement of the account for each unit designating the name of
1464 the unit owner, the due date and amount of each assessment, the
1465 amount paid upon the account, and the balance due.

1466 c. All audits, reviews, accounting statements, and
1467 financial reports of the association.

1468 d. All contracts for work to be performed. Bids for work to
1469 be performed shall also be considered official records and shall
1470 be maintained for a period of 1 year.

1471 10. Ballots, sign-in sheets, voting proxies, and all other
1472 papers relating to voting by unit owners, which shall be
1473 maintained for a period of 1 year after the date of the
1474 election, vote, or meeting to which the document relates.

1475 11. All rental records where the association is acting as
1476 agent for the rental of units.

1477 12. A copy of the current question and answer sheet as
1478 described in s. 719.504.

1479 13. All other written records of the association not
1480 specifically included in the foregoing which are related to the
1481 operation of the association.

1482 Section 16. Paragraphs (c) and (d) of subsection (1) of
1483 section 719.106, Florida Statutes, are amended to read:

1484 719.106 Bylaws; cooperative ownership.—

1485 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
1486 documents shall provide for the following, and if they do not,
1487 they shall be deemed to include the following:

1488 (c) *Board of administration meetings.*—Meetings of the board
1489 of administration at which a quorum of the members is present
1490 shall be open to all unit owners. Any unit owner may tape record



406496

1491 or videotape meetings of the board of administration; however, a
1492 unit owner may not post the recordings on any website or other
1493 media that can readily be viewed by persons who are not members
1494 of the association. The right to attend such meetings includes
1495 the right to speak at such meetings with reference to all
1496 designated agenda items. The division shall adopt reasonable
1497 rules governing the tape recording and videotaping of the
1498 meeting. The association may adopt reasonable written rules
1499 governing the frequency, duration, and manner of unit owner
1500 statements. Adequate notice of all meetings shall be posted in a
1501 conspicuous place upon the cooperative property at least 48
1502 continuous hours preceding the meeting, except in an emergency.
1503 Any item not included on the notice may be taken up on an
1504 emergency basis by at least a majority plus one of the members
1505 of the board. Such emergency action shall be noticed and
1506 ratified at the next regular meeting of the board. However,
1507 written notice of any meeting at which nonemergency special
1508 assessments, or at which amendment to rules regarding unit use,
1509 will be considered shall be mailed, delivered, or electronically
1510 transmitted to the unit owners and posted conspicuously on the
1511 cooperative property not less than 14 days before the meeting.
1512 Evidence of compliance with this 14-day notice shall be made by
1513 an affidavit executed by the person providing the notice and
1514 filed among the official records of the association. Upon notice
1515 to the unit owners, the board shall by duly adopted rule
1516 designate a specific location on the cooperative property upon
1517 which all notices of board meetings shall be posted. In lieu of
1518 or in addition to the physical posting of notice of any meeting
1519 of the board of administration on the cooperative property, the



406496

1520 association may, by reasonable rule, adopt a procedure for
1521 conspicuously posting and repeatedly broadcasting the notice and
1522 the agenda on a closed-circuit cable television system serving
1523 the cooperative association. However, if broadcast notice is
1524 used in lieu of a notice posted physically on the cooperative
1525 property, the notice and agenda must be broadcast at least four
1526 times every broadcast hour of each day that a posted notice is
1527 otherwise required under this section. When broadcast notice is
1528 provided, the notice and agenda must be broadcast in a manner
1529 and for a sufficient continuous length of time so as to allow an
1530 average reader to observe the notice and read and comprehend the
1531 entire content of the notice and the agenda. Notice of any
1532 meeting in which regular assessments against unit owners are to
1533 be considered for any reason shall specifically contain a
1534 statement that assessments will be considered and the nature of
1535 any such assessments. Meetings of a committee to take final
1536 action on behalf of the board or to make recommendations to the
1537 board regarding the association budget are subject to the
1538 provisions of this paragraph. Meetings of a committee that does
1539 not take final action on behalf of the board or make
1540 recommendations to the board regarding the association budget
1541 are subject to the provisions of this section, unless those
1542 meetings are exempted from this section by the bylaws of the
1543 association. Notwithstanding any other law to the contrary, the
1544 requirement that board meetings and committee meetings be open
1545 to the unit owners does not apply to board or committee meetings
1546 held for the purpose of discussing personnel matters or meetings
1547 between the board or a committee and the association's attorney,
1548 with respect to proposed or pending litigation, if the meeting



406496

1549 is held for the purpose of seeking or rendering legal advice.

1550 (d) *Shareholder meetings.*—There shall be an annual meeting
1551 of the shareholders. All members of the board of administration
1552 shall be elected at the annual meeting unless the bylaws provide
1553 for staggered election terms or for their election at another
1554 meeting. Any unit owner desiring to be a candidate for board
1555 membership must comply with subparagraph 1. The bylaws must
1556 provide the method for calling meetings, including annual
1557 meetings. Written notice, which must incorporate an
1558 identification of agenda items, shall be given to each unit
1559 owner at least 14 days before the annual meeting and posted in a
1560 conspicuous place on the cooperative property at least 14
1561 continuous days preceding the annual meeting. Upon notice to the
1562 unit owners, the board must by duly adopted rule designate a
1563 specific location on the cooperative property upon which all
1564 notice of unit owner meetings are posted. In lieu of or in
1565 addition to the physical posting of the meeting notice, the
1566 association may, by reasonable rule, adopt a procedure for
1567 conspicuously posting and repeatedly broadcasting the notice and
1568 the agenda on a closed-circuit cable television system serving
1569 the cooperative association. However, if broadcast notice is
1570 used in lieu of a posted notice, the notice and agenda must be
1571 broadcast at least four times every broadcast hour of each day
1572 that a posted notice is otherwise required under this section.
1573 If broadcast notice is provided, the notice and agenda must be
1574 broadcast in a manner and for a sufficient continuous length of
1575 time to allow an average reader to observe the notice and read
1576 and comprehend the entire content of the notice and the agenda.
1577 Unless a unit owner waives in writing the right to receive



406496

1578 notice of the annual meeting, the notice of the annual meeting
1579 must be sent by mail, hand delivered, or electronically
1580 transmitted to each unit owner. An officer of the association
1581 must provide an affidavit or United States Postal Service
1582 certificate of mailing, to be included in the official records
1583 of the association, affirming that notices of the association
1584 meeting were mailed, hand delivered, or electronically
1585 transmitted, in accordance with this provision, to each unit
1586 owner at the address last furnished to the association.

1587 1. The board of administration shall be elected by written
1588 ballot or voting machine. A proxy may not be used in electing
1589 the board of administration in general elections or elections to
1590 fill vacancies caused by recall, resignation, or otherwise
1591 unless otherwise provided in this chapter.

1592 a. At least 60 days before a scheduled election, the
1593 association shall mail, deliver, or transmit, whether by
1594 separate association mailing, delivery, or electronic
1595 transmission or included in another association mailing,
1596 delivery, or electronic transmission, including regularly
1597 published newsletters, to each unit owner entitled to vote, a
1598 first notice of the date of the election. Any unit owner or
1599 other eligible person desiring to be a candidate for the board
1600 of administration must give written notice to the association at
1601 least 40 days before a scheduled election. Together with the
1602 written notice and agenda as set forth in this section, the
1603 association shall mail, deliver, or electronically transmit a
1604 second notice of election to all unit owners entitled to vote,
1605 together with a ballot that lists all candidates. Upon request
1606 of a candidate, the association shall include an information



406496

1607 sheet, no larger than 8 1/2 inches by 11 inches, which must be
1608 furnished by the candidate at least 35 days before the election,
1609 to be included with the mailing, delivery, or electronic
1610 transmission of the ballot, with the costs of mailing, delivery,
1611 or transmission and copying to be borne by the association. The
1612 association is not liable for the contents of the information
1613 sheets provided by the candidates. In order to reduce costs, the
1614 association may print or duplicate the information sheets on
1615 both sides of the paper. The division shall by rule establish
1616 voting procedures consistent with this subparagraph, including
1617 rules establishing procedures for giving notice by electronic
1618 transmission and rules providing for the secrecy of ballots.
1619 Elections shall be decided by a plurality of those ballots cast.
1620 There is no quorum requirement. However, at least 20 percent of
1621 the eligible voters must cast a ballot in order to have a valid
1622 election. A unit owner may not permit any other person to vote
1623 his or her ballot, and any such ballots improperly cast are
1624 invalid. A unit owner who needs assistance in casting the ballot
1625 for the reasons stated in s. 101.051 may obtain assistance in
1626 casting the ballot. Any unit owner violating this provision may
1627 be fined by the association in accordance with s. 719.303. The
1628 regular election must occur on the date of the annual meeting.
1629 This subparagraph does not apply to timeshare cooperatives.
1630 Notwithstanding this subparagraph, an election and balloting are
1631 not required unless more candidates file a notice of intent to
1632 run or are nominated than vacancies exist on the board. Any
1633 challenge to the election process must be commenced within 60
1634 days after the election results are announced.

1635 b. Within 90 days after being elected or appointed to the



406496

1636 board, each new director shall certify in writing to the
1637 secretary of the association that he or she has read the
1638 association's bylaws, articles of incorporation, proprietary
1639 lease, and current written policies; that he or she will work to
1640 uphold such documents and policies to the best of his or her
1641 ability; and that he or she will faithfully discharge his or her
1642 fiduciary responsibility to the association's members. Within 90
1643 days after being elected or appointed to the board, in lieu of
1644 this written certification, the newly elected or appointed
1645 director may submit a certificate of having satisfactorily
1646 completed the educational curriculum administered by an
1647 education provider as approved by the division pursuant to the
1648 requirements established in chapter 718 within 1 year before or
1649 90 days after the date of election or appointment. The
1650 educational certificate is valid and does not have to be
1651 resubmitted as long as the director serves on the board without
1652 interruption. A director who fails to timely file the written
1653 certification or educational certificate is suspended from
1654 service on the board until he or she complies with this sub-
1655 subparagraph. The board may temporarily fill the vacancy during
1656 the period of suspension. The secretary of the association shall
1657 cause the association to retain a director's written
1658 certification or educational certificate for inspection by the
1659 members for 5 years after a director's election or the duration
1660 of the director's uninterrupted tenure, whichever is longer.
1661 Failure to have such written certification or educational
1662 certificate on file does not affect the validity of any board
1663 action.

1664 2. Any approval by unit owners called for by this chapter,



406496

1665 or the applicable cooperative documents, must be made at a duly
1666 noticed meeting of unit owners and is subject to this chapter or
1667 the applicable cooperative documents relating to unit owner
1668 decisionmaking, except that unit owners may take action by
1669 written agreement, without meetings, on matters for which action
1670 by written agreement without meetings is expressly allowed by
1671 the applicable cooperative documents or law which provides for
1672 the unit owner action.

1673 3. Unit owners may waive notice of specific meetings if
1674 allowed by the applicable cooperative documents or law. ~~If~~
1675 ~~authorized by the bylaws,~~ Notice of meetings of the board of
1676 administration, shareholder meetings, except shareholder
1677 meetings called to recall board members under paragraph (f), and
1678 committee meetings may be given by electronic transmission to
1679 unit owners who consent to receive notice by electronic
1680 transmission.

1681 4. Unit owners have the right to participate in meetings of
1682 unit owners with reference to all designated agenda items.
1683 However, the association may adopt reasonable rules governing
1684 the frequency, duration, and manner of unit owner participation.

1685 5. Any unit owner may tape record or videotape meetings of
1686 the unit owners subject to reasonable rules adopted by the
1687 division; however, a unit owner may not post the recordings on
1688 any website or other media that can readily be viewed by persons
1689 who are not members of the association.

1690 6. Unless otherwise provided in the bylaws, a vacancy
1691 occurring on the board before the expiration of a term may be
1692 filled by the affirmative vote of the majority of the remaining
1693 directors, even if the remaining directors constitute less than



406496

1694 a quorum, or by the sole remaining director. In the alternative,
1695 a board may hold an election to fill the vacancy, in which case
1696 the election procedures must conform to the requirements of
1697 subparagraph 1. unless the association has opted out of the
1698 statutory election process, in which case the bylaws of the
1699 association control. Unless otherwise provided in the bylaws, a
1700 board member appointed or elected under this subparagraph shall
1701 fill the vacancy for the unexpired term of the seat being
1702 filled. Filling vacancies created by recall is governed by
1703 paragraph (f) and rules adopted by the division.

1704
1705 Notwithstanding subparagraphs (b)2. and (d)1., an association
1706 may, by the affirmative vote of a majority of the total voting
1707 interests, provide for a different voting and election procedure
1708 in its bylaws, which vote may be by a proxy specifically
1709 delineating the different voting and election procedures. The
1710 different voting and election procedures may provide for
1711 elections to be conducted by limited or general proxy.

1712 Section 17. Subsections (3) and (4) of section 719.108,
1713 Florida Statutes, are amended to read:

1714 719.108 Rents and assessments; liability; lien and
1715 priority; interest; collection; cooperative ownership.—

1716 (3) Rents and assessments, and installments on them, not
1717 paid when due bear interest at the rate provided in the
1718 cooperative documents from the date due until paid. This rate
1719 may not exceed the rate allowed by law and, if a rate is not
1720 provided in the cooperative documents, accrues at 18 percent per
1721 annum. If the cooperative documents or bylaws so provide, the
1722 association may charge an administrative late fee in addition to



406496

1723 such interest, not to exceed the greater of \$25 or 5 percent of
1724 each installment of the assessment for each delinquent
1725 installment that the payment is late. The association may also
1726 recover from the unit owner any reasonable charges imposed upon
1727 the association under a written contract with its management or
1728 bookkeeping company or collection agent which are incurred in
1729 connection with collecting a delinquent assessment. Such charges
1730 must be based on the actual time expended performing necessary,
1731 nonduplicative services. Fees for collection are not recoverable
1732 for the period after referral of the matter to an association's
1733 legal counsel. Any payment received by an association must be
1734 applied first to any interest accrued by the association, then
1735 to any administrative late fee, then to any costs and reasonable
1736 attorney fees incurred in collection, then to any reasonable
1737 costs for collection services contracted for by the association,
1738 and then to the delinquent assessment. The foregoing applies
1739 notwithstanding s. 673.3111, any purported accord and
1740 satisfaction, or any restrictive endorsement, designation, or
1741 instruction placed on or accompanying a payment. The preceding
1742 sentence is intended to clarify existing law. A late fee is not
1743 subject to chapter 687 or s. 719.303(4).

1744 (4) The association has a lien on each cooperative parcel
1745 for any unpaid rents and assessments, plus interest, any
1746 reasonable costs for collection services contracted for by the
1747 association, and any ~~authorized~~ administrative late fees. If
1748 authorized by the cooperative documents, the lien also secures
1749 reasonable attorney fees incurred by the association incident to
1750 the collection of the rents and assessments or enforcement of
1751 such lien. The lien is effective from and after recording a



406496

1752 claim of lien in the public records in the county in which the
1753 cooperative parcel is located which states the description of
1754 the cooperative parcel, the name of the unit owner, the amount
1755 due, and the due dates. Except as otherwise provided in this
1756 chapter, a lien may not be filed by the association against a
1757 cooperative parcel until 30 days after the date on which a
1758 notice of intent to file a lien has been delivered to the owner.

1759 (a) The notice must be sent to the unit owner at the
1760 address of the unit by first-class United States mail, and the
1761 notice must be in substantially the following form:

1762 NOTICE OF INTENT

1763 TO RECORD A CLAIM OF LIEN

1764 RE: Unit ...(unit number)... of ...(name of cooperative)..
1765 The following amounts are currently due on your account to
1766 ...(name of association)..., and must be paid within 30 days
1767 after your receipt of this letter. This letter shall serve as
1768 the association's notice of intent to record a Claim of Lien
1769 against your property no sooner than 30 days after your receipt
1770 of this letter, unless you pay in full the amounts set forth
1771 below:

1772 Maintenance due ...(dates)... \$.....

1773 Late fee, if applicable \$.....

1774 Interest through ...(dates)...* \$.....

1775 Certified mail charges \$.....

1776 Other costs \$.....

1777 TOTAL OUTSTANDING \$.....

1778 *Interest accrues at the rate of percent per annum.

1779 1. If the most recent address of the unit owner on the
1780 records of the association is the address of the unit, the



406496

1781 notice must be sent by certified mail, return receipt requested,
1782 to the unit owner at the address of the unit.

1783 2. If the most recent address of the unit owner on the
1784 records of the association is in the United States, but is not
1785 the address of the unit, the notice must be sent by certified
1786 mail, return receipt requested, to the unit owner at his or her
1787 most recent address.

1788 3. If the most recent address of the unit owner on the
1789 records of the association is not in the United States, the
1790 notice must be sent by first-class United States mail to the
1791 unit owner at his or her most recent address.

1792 (b) A notice that is sent pursuant to this subsection is
1793 deemed delivered upon mailing. A claim of lien must be executed
1794 and acknowledged by an officer or authorized agent of the
1795 association. The lien is not effective 1 year after the claim of
1796 lien was recorded unless, within that time, an action to enforce
1797 the lien is commenced. The 1-year period is automatically
1798 extended for any length of time during which the association is
1799 prevented from filing a foreclosure action by an automatic stay
1800 resulting from a bankruptcy petition filed by the parcel owner
1801 or any other person claiming an interest in the parcel. The
1802 claim of lien secures all unpaid rents and assessments that are
1803 due and that may accrue after the claim of lien is recorded and
1804 through the entry of a final judgment, as well as interest and
1805 all reasonable costs and attorney fees incurred by the
1806 association incident to the collection process. Upon payment in
1807 full, the person making the payment is entitled to a
1808 satisfaction of the lien.

1809 (c) By recording a notice in substantially the following



406496

1810 form, a unit owner or the unit owner's agent or attorney may
1811 require the association to enforce a recorded claim of lien
1812 against his or her cooperative parcel:

1813 NOTICE OF CONTEST OF LIEN

1814 TO: ...(Name and address of association)...:

1815 You are notified that the undersigned contests the claim of lien
1816 filed by you on, ...(year)..., and recorded in Official
1817 Records Book at Page, of the public records of
1818 County, Florida, and that the time within which you may file
1819 suit to enforce your lien is limited to 90 days from the date of
1820 service of this notice. Executed this day of,
1821 ...(year)....

1822 Signed: ...(Owner or Attorney)...

1823 After notice of contest of lien has been recorded, the clerk of
1824 the circuit court shall mail a copy of the recorded notice to
1825 the association by certified mail, return receipt requested, at
1826 the address shown in the claim of lien or most recent amendment
1827 to it and shall certify to the service on the face of the
1828 notice. Service is complete upon mailing. After service, the
1829 association has 90 days in which to file an action to enforce
1830 the lien. If the action is not filed within the 90-day period,
1831 the lien is void. However, the 90-day period shall be extended
1832 for any length of time during which the association is prevented
1833 from filing its action because of an automatic stay resulting
1834 from the filing of a bankruptcy petition by the unit owner or by
1835 any other person claiming an interest in the parcel.

1836 (d) A release of lien must be in substantially the
1837 following form:

1838 RELEASE OF LIEN



406496

1839 The undersigned lienor, in consideration of the final payment in
1840 the amount of \$...., hereby waives and releases its lien and
1841 right to claim a lien for unpaid assessments through,
1842 ...(year)..., recorded in the Official Records Book at Page
1843, of the public records of County, Florida, for the
1844 following described real property:

1845 THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO. OF ...(NAME
1846 OF COOPERATIVE)..., A COOPERATIVE AS SET FORTH IN THE
1847 COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND
1848 FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK,
1849 PAGE, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.

1850 ...(Signature of Authorized Agent)... ...(Signature of
1851 Witness)...

1852 ...(Print Name)... ...(Print Name)...

1853 ... (Signature of Witness)...

1854 ... (Print Name)...

1855 Sworn to (or affirmed) and subscribed before me this day of
1856, ...(year)..., by ...(name of person making statement)....

1857 ...(Signature of Notary Public)...

1858 ...(Print, type, or stamp commissioned name of Notary Public)...

1859 Personally Known OR Produced as identification.

1860 Section 18. Section 719.129, Florida Statutes, is created
1861 to read:

1862 719.129 Electronic voting.—The association may conduct
1863 elections and other unit owner votes through an Internet-based
1864 online voting system if a unit owner consents in writing to
1865 online voting and if the following requirements are met:

1866 (1) The association provides each unit owner with:

1867 (a) A method to authenticate the unit owner's identity to



406496

1868 the online voting system.

1869 (b) For elections of the board, a method to transmit an
1870 electronic ballot to the online voting system that ensures the
1871 secrecy and integrity of each ballot.

1872 (c) A method to confirm, at least 14 days before the voting
1873 deadline, that the unit owner's electronic device can
1874 successfully communicate with the online voting system.

1875 (2) The association uses an online voting system that is:

1876 (a) Able to authenticate the unit owner's identity.

1877 (b) Able to authenticate the validity of each electronic
1878 vote to ensure that the vote is not altered in transit.

1879 (c) Able to transmit a receipt from the online voting
1880 system to each unit owner who casts an electronic vote.

1881 (d) For elections of the board of administration, able to
1882 permanently separate any authentication or identifying
1883 information from the electronic election ballot, rendering it
1884 impossible to tie an election ballot to a specific unit owner.

1885 (e) Able to store and keep electronic votes accessible to
1886 election officials for recount, inspection, and review purposes.

1887 (3) A unit owner voting electronically pursuant to this
1888 section shall be counted as being in attendance at the meeting
1889 for purposes of determining a quorum. A substantive vote of the
1890 unit owners may not be taken on any issue other than the issues
1891 specifically identified in the electronic vote when a quorum is
1892 established based on unit owners voting electronically pursuant
1893 to this section.

1894 (4) This section applies to an association that provides
1895 for and authorizes an online voting system pursuant to this
1896 section by a board resolution. The board resolution must provide



406496

1897 that unit owners receive notice of the opportunity to vote
1898 through an online voting system, must establish reasonable
1899 procedures and deadlines for unit owners to consent in writing
1900 to online voting, and must establish reasonable procedures and
1901 deadlines for unit owners to opt out of online voting after
1902 giving consent. Written notice of a meeting at which the
1903 resolution will be considered must be mailed, delivered, or
1904 electronically transmitted to the unit owners and posted
1905 conspicuously on the condominium property or association
1906 property at least 14 days before the meeting. Evidence of
1907 compliance with the 14-day notice requirement must be made by an
1908 affidavit executed by the person providing the notice and filed
1909 with the official records of the association.

1910 (5) A unit owner's consent to online voting is valid until
1911 the unit owner opts out of online voting pursuant to the
1912 procedures established by the board of administration pursuant
1913 to paragraph (4).

1914 (6) This section may apply to any matter that requires a
1915 vote of the unit owners.

1916 Section 19. Subsection (3) of section 719.303, Florida
1917 Statutes, is amended to read:

1918 719.303 Obligations of owners.—

1919 (3) The association may levy reasonable fines for failure
1920 of the unit owner or the unit's occupant, licensee, or invitee
1921 to comply with any provision of the cooperative documents or
1922 reasonable rules of the association. A fine may not become a
1923 lien against a unit. A fine may be levied by the board of
1924 administration or its authorized designee on the basis of each
1925 day of a continuing violation, with a single notice and



406496

1926 opportunity for hearing before an impartial committee as
1927 provided in paragraph (b). However, the fine may not exceed \$100
1928 per violation, or \$1,000 in the aggregate.

1929 (a) An association may suspend, for a reasonable period of
1930 time, the right of a unit owner, or a unit owner's tenant,
1931 guest, or invitee, to use the common elements, common
1932 facilities, or any other association property for failure to
1933 comply with any provision of the cooperative documents or
1934 reasonable rules of the association. This paragraph does not
1935 apply to limited common elements intended to be used only by
1936 that unit, common elements needed to access the unit, utility
1937 services provided to the unit, parking spaces, or elevators.

1938 (b) A fine or suspension levied by the board of
1939 administration or its authorized designee may not be imposed
1940 unless the board first provides at least 14 days' written ~~except~~
1941 ~~after giving reasonable~~ notice and an opportunity for a hearing
1942 to the unit owner and, if applicable, its occupant, the unit's
1943 licensee, or invitee. The hearing must be held before an
1944 impartial a committee of other unit owners who are neither board
1945 members, persons residing in a board member's household, nor the
1946 authorized designee or members of the authorized designee's
1947 household. The role of the impartial committee is limited to
1948 determining whether to confirm or reject the fine or suspension
1949 levied by the board or its authorized designee. If the impartial
1950 committee does not agree with the fine or suspension, it may not
1951 be imposed.

1952 Section 20. Subsection (8) of section 720.301, Florida
1953 Statutes, is amended to read:

1954 720.301 Definitions.—As used in this chapter, the term:



406496

1955 (8) "Governing documents" means:

1956 (a) The recorded declaration of covenants for a community,⁷
1957 and all duly adopted and recorded amendments, supplements, and
1958 recorded exhibits thereto; ~~and~~

1959 (b) The articles of incorporation and bylaws of the
1960 homeowners' association,⁷ and any duly adopted amendments
1961 thereto; and

1962 (c) Rules and regulations adopted under the authority of
1963 the recorded declaration, articles of incorporation, or bylaws
1964 and duly adopted amendments thereto.

1965 Section 21. Section 720.3015, Florida Statutes, is created
1966 to read:

1967 720.3015 Short title.—This chapter may be cited as the
1968 "Homeowners' Association Act."

1969 Section 22. Paragraph (c) of subsection (2) of section
1970 720.303, Florida Statutes, is amended to read:

1971 720.303 Association powers and duties; meetings of board;
1972 official records; budgets; financial reporting; association
1973 funds; recalls.—

1974 (2) BOARD MEETINGS.—

1975 (c) The bylaws shall provide for giving notice to parcel
1976 owners and members of all board meetings and, if they do not do
1977 so, shall be deemed to provide the following:

1978 1. Notices of all board meetings must be posted in a
1979 conspicuous place in the community at least 48 hours in advance
1980 of a meeting, except in an emergency. In the alternative, if
1981 notice is not posted in a conspicuous place in the community,
1982 notice of each board meeting must be mailed or delivered to each
1983 member at least 7 days before the meeting, except in an



406496

1984 emergency. Notwithstanding this general notice requirement, for
1985 communities with more than 100 members, the bylaws may provide
1986 for a reasonable alternative to posting or mailing of notice for
1987 each board meeting, including publication of notice, provision
1988 of a schedule of board meetings, or the conspicuous posting and
1989 repeated broadcasting of the notice on a closed-circuit cable
1990 television system serving the homeowners' association. However,
1991 if broadcast notice is used in lieu of a notice posted
1992 physically in the community, the notice must be broadcast at
1993 least four times every broadcast hour of each day that a posted
1994 notice is otherwise required. When broadcast notice is provided,
1995 the notice and agenda must be broadcast in a manner and for a
1996 sufficient continuous length of time so as to allow an average
1997 reader to observe the notice and read and comprehend the entire
1998 content of the notice and the agenda. The association bylaws ~~or~~
1999 ~~amended bylaws~~ may provide ~~for giving~~ notice by electronic
2000 transmission in a manner authorized by law for meetings of the
2001 board of directors, committee meetings requiring notice under
2002 this section, and annual and special meetings of the members;
2003 however, a member must consent in writing to receiving notice by
2004 electronic transmission.

2005 2. An assessment may not be levied at a board meeting
2006 unless the notice of the meeting includes a statement that
2007 assessments will be considered and the nature of the
2008 assessments. Written notice of any meeting at which special
2009 assessments will be considered or at which amendments to rules
2010 regarding parcel use will be considered must be mailed,
2011 delivered, or electronically transmitted to the members and
2012 parcel owners and posted conspicuously on the property or



406496

2013 broadcast on closed-circuit cable television not less than 14
2014 days before the meeting.

2015 3. Directors may not vote by proxy or by secret ballot at
2016 board meetings, except that secret ballots may be used in the
2017 election of officers. This subsection also applies to the
2018 meetings of any committee or other similar body, when a final
2019 decision will be made regarding the expenditure of association
2020 funds, and to any body vested with the power to approve or
2021 disapprove architectural decisions with respect to a specific
2022 parcel of residential property owned by a member of the
2023 community.

2024 Section 23. Section 720.305, Florida Statutes, is amended
2025 to read:

2026 720.305 Obligations of members; remedies at law or in
2027 equity; levy of fines and suspension of use rights.—

2028 (1) Each member and the member's tenants, guests, and
2029 invitees, and each association, are governed by, and must comply
2030 with, this chapter, the governing documents of the community,
2031 and the rules of the association. Actions at law or in equity,
2032 or both, to redress alleged failure or refusal to comply with
2033 these provisions may be brought by the association or by any
2034 member against:

2035 (a) The association;

2036 (b) A member;

2037 (c) Any director or officer of an association who willfully
2038 and knowingly fails to comply with these provisions; and

2039 (d) Any tenants, guests, or invitees occupying a parcel or
2040 using the common areas.

2041



406496

2042 The prevailing party in any such litigation is entitled to
2043 recover reasonable attorney ~~attorney's~~ fees and costs. A member
2044 prevailing in an action between the association and the member
2045 under this section, in addition to recovering his or her
2046 reasonable attorney ~~attorney's~~ fees, may recover additional
2047 amounts as determined by the court to be necessary to reimburse
2048 the member for his or her share of assessments levied by the
2049 association to fund its expenses of the litigation. This relief
2050 does not exclude other remedies provided by law. This section
2051 does not deprive any person of any other available right or
2052 remedy.

2053 (2) The association may levy reasonable fines. A fine may
2054 not exceed ~~of up to~~ \$100 per violation against any member or any
2055 member's tenant, guest, or invitee for the failure of the owner
2056 of the parcel or its occupant, licensee, or invitee to comply
2057 with any provision of the declaration, the association bylaws,
2058 or reasonable rules of the association unless otherwise provided
2059 in the governing documents. A fine may be levied by the board or
2060 its authorized designee for each day of a continuing violation,
2061 with a single notice and opportunity for hearing, except that
2062 the fine may not exceed \$1,000 in the aggregate unless otherwise
2063 provided in the governing documents. A fine of less than \$1,000
2064 may not become a lien against a parcel. In any action to recover
2065 a fine, the prevailing party is entitled to reasonable attorney
2066 fees and costs from the nonprevailing party as determined by the
2067 court.

2068 (a) An association may suspend, for a reasonable period of
2069 time, the right of a member, or a member's tenant, guest, or
2070 invitee, to use common areas and facilities for the failure of



406496

2071 the owner of the parcel or its occupant, licensee, or invitee to
2072 comply with any provision of the declaration, the association
2073 bylaws, or reasonable rules of the association. This paragraph
2074 does not apply to that portion of common areas used to provide
2075 access or utility services to the parcel. A suspension may not
2076 prohibit ~~impair the right of~~ an owner or tenant of a parcel from
2077 having to have vehicular and pedestrian ingress to and egress
2078 from the parcel, including, but not limited to, the right to
2079 park.

2080 (b) A fine or suspension may not be imposed by the board of
2081 administration or its authorized designee without at least 14
2082 days' notice to the person sought to be fined or suspended and
2083 an opportunity for a hearing before an impartial ~~a~~ committee of
2084 at least three members appointed by the board who are not
2085 officers, directors, or employees of the association, or the
2086 spouse, parent, child, brother, or sister of an officer,
2087 director, ~~or~~ employee, or the board's designee or the designee's
2088 family. If the committee, by majority vote, does not approve a
2089 proposed fine or suspension, it may not be imposed. The role of
2090 the impartial committee is limited to determining whether to
2091 confirm or reject the fine or suspension levied by the board or
2092 its authorized designee. If the board of administration or its
2093 authorized designee ~~association~~ imposes a fine or suspension,
2094 the association must provide written notice of such fine or
2095 suspension by mail or hand delivery to the parcel owner and, if
2096 applicable, to any tenant, licensee, or invitee of the parcel
2097 owner.

2098 (3) If a member is more than 90 days delinquent in paying
2099 any fee, fine, or other ~~a~~ monetary obligation due to the



406496

2100 association, the association may suspend the rights of the
2101 member, or the member's tenant, guest, or invitee, to use common
2102 areas and facilities until the fee, fine, or other monetary
2103 obligation is paid in full. This subsection does not apply to
2104 that portion of common areas used to provide access or utility
2105 services to the parcel. A suspension may ~~does~~ not prohibit
2106 ~~impair the right of~~ an owner or tenant of a parcel from having
2107 ~~to have~~ vehicular and pedestrian ingress to and egress from the
2108 parcel, including, but not limited to, the right to park. The
2109 notice and hearing requirements under subsection (2) do not
2110 apply to a suspension imposed under this subsection.

2111 (4) An association may suspend the voting rights of a
2112 parcel or member for the nonpayment of any fee, fine, or other
2113 monetary obligation due to the association which ~~that~~ is more
2114 than 90 days delinquent. A voting interest or consent right
2115 allocated to a parcel or member which has been suspended by the
2116 association shall be subtracted from ~~may not be counted towards~~
2117 the total number of voting interests in the association, which
2118 shall be reduced by the number of suspended voting interests
2119 when calculating the total percentage or number of all voting
2120 interests available to take or approve any action, and the
2121 suspended voting interests may not be considered for any
2122 purpose, including, but not limited to, the percentage or number
2123 of voting interests necessary to constitute a quorum, the
2124 percentage or number of voting interests required to conduct an
2125 election, or the percentage or number of voting interests
2126 required to approve an action under this chapter or pursuant to
2127 the governing documents. The notice and hearing requirements
2128 under subsection (2) do not apply to a suspension imposed under



406496

2129 this subsection. The suspension ends upon full payment of all
2130 obligations currently due or overdue to the association.

2131 (5) All suspensions imposed pursuant to subsection (3) or
2132 subsection (4) must be approved at a properly noticed board
2133 meeting. Upon approval, the association must notify the parcel
2134 owner and, if applicable, the parcel's occupant, licensee, or
2135 invitee by mail or hand delivery.

2136 (6) The suspensions permitted by paragraph (2)(a) and
2137 subsections (3) and (4) apply to a member and, when appropriate,
2138 the member's tenants, guests, or invitees, even if the
2139 delinquency or failure that resulted in the suspension arose
2140 from less than all of the multiple parcels owned by the member.

2141 Section 24. Paragraph (b) of subsection (1) and subsections
2142 (9) and (10) of section 720.306, Florida Statutes, are amended
2143 to read:

2144 720.306 Meetings of members; voting and election
2145 procedures; amendments.—

2146 (1) QUORUM; AMENDMENTS.—

2147 (b) Unless otherwise provided in the governing documents or
2148 required by law, and other than those matters set forth in
2149 paragraph (c), any governing document of an association may be
2150 amended by the affirmative vote of two-thirds of the voting
2151 interests of the association. Within 30 days after recording an
2152 amendment to the governing documents, the association shall
2153 provide copies of the amendment to the members. However, if a
2154 copy of the proposed amendment is provided to the members before
2155 they vote on the amendment ~~and the proposed amendment is not~~
2156 ~~changed before the vote~~, the association, in lieu of providing a
2157 copy of the amendment, may provide notice to the members that



406496

2158 the amendment was adopted, identifying the official book and
2159 page number or instrument number of the recorded amendment and
2160 that a copy of the amendment is available at no charge to the
2161 member upon written request to the association. The copies and
2162 notice described in this paragraph may be provided
2163 electronically to those owners who previously consented to
2164 receive notice electronically. The failure to timely provide
2165 notice of the recording of the amendment does not affect the
2166 validity or enforceability of the amendment.

2167 (9) ELECTIONS AND BOARD VACANCIES.—

2168 (a) Elections of directors must be conducted in accordance
2169 with the procedures set forth in the governing documents of the
2170 association. Except as provided in paragraph (b), all members of
2171 the association are eligible to serve on the board of directors,
2172 and a member may nominate himself or herself as a candidate for
2173 the board at a meeting where the election is to be held;
2174 provided, however, that if the election process allows
2175 candidates to be nominated in advance of the meeting, the
2176 association is not required to allow nominations at the meeting.
2177 An election is not required unless more candidates are nominated
2178 than vacancies exist. Except as otherwise provided in the
2179 governing documents, boards of directors must be elected by a
2180 plurality of the votes cast by eligible voters. Any challenge to
2181 the election process must be commenced within 60 days after the
2182 election results are announced.

2183 (b) A person who is delinquent in the payment of any fee,
2184 fine, or other monetary obligation to the association on the day
2185 that he or she could last nominate himself or herself or be
2186 nominated for the board may not seek election to the board, and



406496

2187 his or her name may not be listed on the ballot. A person
2188 serving as a board member who becomes more than 90 days
2189 delinquent in the payment of any fee, fine, or other monetary
2190 obligation to the association shall be deemed to have abandoned
2191 his or her seat on the board, creating a vacancy on the board to
2192 be filled according to law. For purposes of this paragraph, the
2193 term "any fee, fine, or other monetary obligation" means any
2194 delinquency to the association with respect to any parcel ~~for~~
2195 ~~more than 90 days is not eligible for board membership.~~ A person
2196 who has been convicted of any felony in this state or in a
2197 United States District or Territorial Court, or has been
2198 convicted of any offense in another jurisdiction which would be
2199 considered a felony if committed in this state, may not seek
2200 election to the board and is not eligible for board membership
2201 unless such felon's civil rights have been restored for at least
2202 5 years as of the date on which such person seeks election to
2203 the board. The validity of any action by the board is not
2204 affected if it is later determined that a person was ineligible
2205 to seek election to the board or that a member of the board is
2206 ineligible for board membership.

2207 (c) Any election dispute between a member and an
2208 association must be submitted to mandatory binding arbitration
2209 with the division. Such proceedings must be conducted in the
2210 manner provided by s. 718.1255 and the procedural rules adopted
2211 by the division. Unless otherwise provided in the bylaws, any
2212 vacancy occurring on the board before the expiration of a term
2213 may be filled by an affirmative vote of the majority of the
2214 remaining directors, even if the remaining directors constitute
2215 less than a quorum, or by the sole remaining director. In the



406496

2216 alternative, a board may hold an election to fill the vacancy,
2217 in which case the election procedures must conform to the
2218 requirements of the governing documents. Unless otherwise
2219 provided in the bylaws, a board member appointed or elected
2220 under this section is appointed for the unexpired term of the
2221 seat being filled. Filling vacancies created by recall is
2222 governed by s. 720.303(10) and rules adopted by the division.

2223 (10) RECORDING.—Any parcel owner may tape record or
2224 videotape meetings of the board of directors and meetings of the
2225 members; however, a parcel owner may not post the recordings on
2226 any website or other media that can readily be viewed by persons
2227 who are not members of the association. The board of directors
2228 of the association may adopt reasonable rules governing the
2229 taping of meetings of the board and the membership.

2230 Section 24. Paragraph (a) of subsection (1) and subsection
2231 (3) of section 720.3085, Florida Statutes, are amended to read:

2232 720.3085 Payment for assessments; lien claims.—

2233 (1) When authorized by the governing documents, the
2234 association has a lien on each parcel to secure the payment of
2235 assessments and other amounts provided for by this section.
2236 Except as otherwise set forth in this section, the lien is
2237 effective from and shall relate back to the date on which the
2238 original declaration of the community was recorded. However, as
2239 to first mortgages of record, the lien is effective from and
2240 after recording of a claim of lien in the public records of the
2241 county in which the parcel is located. This subsection does not
2242 bestow upon any lien, mortgage, or certified judgment of record
2243 on July 1, 2008, including the lien for unpaid assessments
2244 created in this section, a priority that, by law, the lien,



406496

2245 mortgage, or judgment did not have before July 1, 2008.

2246 (a) To be valid, a claim of lien must state the description
2247 of the parcel, the name of the record owner, the name and
2248 address of the association, the assessment amount due, and the
2249 due date. The claim of lien secures all unpaid assessments that
2250 are due and that may accrue subsequent to the recording of the
2251 claim of lien and before entry of a certificate of title, as
2252 well as interest, late charges, and reasonable collection costs
2253 and attorney fees incurred by the association incident to the
2254 collection process. The person making payment is entitled to a
2255 satisfaction of the lien upon payment in full.

2256 (3) Assessments and installments on assessments that are
2257 not paid when due bear interest from the due date until paid at
2258 the rate provided in the declaration of covenants or the bylaws
2259 of the association, which rate may not exceed the rate allowed
2260 by law. If no rate is provided in the declaration or bylaws,
2261 interest accrues at the rate of 18 percent per year.

2262 (a) If the declaration or bylaws so provide, the
2263 association may also charge an administrative late fee not to
2264 exceed the greater of \$25 or 5 percent of the amount of each
2265 installment that is paid past the due date. The association may
2266 also recover from the parcel owner any reasonable charges
2267 imposed upon the association under a written contract with its
2268 management or bookkeeping company or collection agent which are
2269 incurred in connection with collecting a delinquent assessment.
2270 Such charges must be based on the actual time expended
2271 performing necessary, nonduplicative services. Fees for
2272 collection are not recoverable for the period after referral of
2273 the matter to an association's legal counsel.



406496

2274 (b) Any payment received by an association and accepted
2275 shall be applied first to any interest accrued, then to any
2276 administrative late fee, then to any costs and reasonable
2277 attorney fees incurred in collection, then to any reasonable
2278 costs for collection services contracted for by the association,
2279 and then to the delinquent assessment. This paragraph applies
2280 notwithstanding any restrictive endorsement, designation, or
2281 instruction placed on or accompanying a payment. A late fee is
2282 not subject to the provisions of chapter 687 and is not a fine.

2283 Section 25. Section 720.317, Florida Statutes, is created
2284 to read:

2285 720.317 Electronic voting.—The association may conduct
2286 elections and other membership votes through an Internet-based
2287 online voting system if a member consents in writing to online
2288 voting and if the following requirements are met:

2289 (1) The association provides each member with:

2290 (a) A method to authenticate the member's identity to the
2291 online voting system.

2292 (b) A method to confirm, at least 14 days before the voting
2293 deadline, that the member's electronic device can successfully
2294 communicate with the online voting system.

2295 (c) A method that is consistent with the election and
2296 voting procedures in the association's bylaws.

2297 (2) The association uses an online voting system that is:

2298 (a) Able to authenticate the member's identity.

2299 (b) Able to authenticate the validity of each electronic
2300 vote to ensure that the vote is not altered in transit.

2301 (c) Able to transmit a receipt from the online voting
2302 system to each member who casts an electronic vote.



406496

2303 (d) Able to permanently separate any authentication or
2304 identifying information from the electronic election ballot,
2305 rendering it impossible to tie an election ballot to a specific
2306 member. This paragraph only applies if the association's bylaws
2307 provide for secret ballots for the election of directors.

2308 (e) Able to store and keep electronic ballots accessible to
2309 election officials for recount, inspection, and review purposes.

2310 (3) A member voting electronically pursuant to this section
2311 shall be counted as being in attendance at the meeting for
2312 purposes of determining a quorum.

2313 (4) This section applies to an association that provides
2314 for and authorizes an online voting system pursuant to this
2315 section by a board resolution. The board resolution must provide
2316 that members receive notice of the opportunity to vote through
2317 an online voting system, must establish reasonable procedures
2318 and deadlines for members to consent in writing to online
2319 voting, and must establish reasonable procedures and deadlines
2320 for members to opt out of online voting after giving consent.

2321 Written notice of a meeting at which the board resolution
2322 regarding online voting will be considered must be mailed,
2323 delivered, or electronically transmitted to the unit owners and
2324 posted conspicuously on the condominium property or association
2325 property at least 14 days before the meeting. Evidence of
2326 compliance with the 14-day notice requirement must be made by an
2327 affidavit executed by the person providing the notice and filed
2328 with the official records of the association.

2329 (5) A member's consent to online voting is valid until the
2330 member opts out of online voting pursuant to the procedures
2331 established by the board of administration pursuant to paragraph



406496

2332 (4) .

2333 (6) This section may apply to any matter that requires a
2334 vote of the members.

2335
2336 ===== T I T L E A M E N D M E N T =====

2337 And the title is amended as follows:

2338 Delete lines 29 - 139

2339 and insert:

2340 electronically is counted toward a quorum; providing
2341 applicability; providing that a unit owner's consent
2342 to online voting is valid unit the unit owner opts out
2343 according to specified procedures; amending s.

2344 718.301, F.S.; adding conditions under which certain
2345 unit owners are entitled to elect at least a majority
2346 of the members of the board of administration of an
2347 association; requiring a bulk-unit purchaser to
2348 relinquish control of the association under certain
2349 circumstances; requiring a bulk-unit purchaser to
2350 deliver certain items, at the bulk-unit purchaser's
2351 expense, during the transfer of association control
2352 from the bulk-unit purchaser; amending s. 718.302,
2353 F.S.; revising the conditions under which certain
2354 grants, reservations, or contracts made by an
2355 association may be cancelled; prohibiting a lender-
2356 unit purchaser from voting on cancellation of certain
2357 grants, reservations, or contracts while the
2358 association is under control of that lender-unit
2359 purchaser; amending s. 718.303, F.S.; providing that a
2360 fine may be levied by the board or its authorized



406496

2361 designee under certain conditions; revising the
2362 requirements for levying a fine or suspension;
2363 amending s. 718.501, F.S.; conforming provisions of
2364 chapter 718, F.S., relating to the enforcement powers
2365 of the Division of Florida Condominiums, Timeshares,
2366 and Mobile Homes; creating s. 718.709, F.S.; providing
2367 applicability of the provisions relating to the
2368 Distressed Condominium Relief Act; creating part VIII
2369 of ch. 718, F.S.; providing legislative intent;
2370 providing definitions; authorizing a bulk-unit
2371 purchaser to exercise certain developer rights;
2372 requiring a bulk-unit purchaser to pay a working
2373 capital contribution under certain circumstances;
2374 providing applicability; authorizing a lender-unit
2375 purchaser to exercise any developer rights he or she
2376 acquires; requiring a bulk-unit purchaser and a
2377 lender-unit purchaser to comply with specified
2378 provisions under ch. 718, F.S.; limiting the rights of
2379 bulk-unit purchasers and lender-unit purchasers to
2380 vote on reserves or funding of reserves; prohibiting
2381 the transfer of such voting rights; providing
2382 assessment liability for bulk-unit purchasers and
2383 lender-unit purchasers; providing for suspension of a
2384 director who has been elected or appointed by a bulk-
2385 unit purchaser in certain circumstances; specifying
2386 amendments and alterations for which a majority
2387 approval of unit owners is required; requiring consent
2388 of a bulk-unit purchaser, lender-unit purchaser, or
2389 developer to certain amendments; requiring certain



406496

2390 warranties and disclosures; requiring an architect or
2391 engineer to disclose specified information in a
2392 condition report under certain circumstances;
2393 subjecting multiple bulk-unit purchasers to joint and
2394 several liability; prohibiting a board of
2395 administration, a majority of which is elected by a
2396 bulk-unit purchaser, from resolving certain
2397 construction disputes unless other conditions are
2398 satisfied; providing that a bulk-unit purchaser or
2399 lender-unit purchaser who does not comply with ch.
2400 718, F.S., forfeits all protections or exemptions
2401 under ch. 718, F.S.; clarifying conditions under which
2402 a bulk-unit purchaser must deliver certain items
2403 during the transfer of association control from the
2404 bulk-unit purchaser; providing conditions by which a
2405 person may become a bulk-unit purchaser following
2406 acquisition of title to timeshare interests that are
2407 or ultimately will be included in a timeshare plan;
2408 requiring disclosure to purchasers by certain bulk-
2409 unit purchasers of timeshare interests; amending s.
2410 719.104, F.S.; revising what constitutes the official
2411 records of an association; amending s. 719.106, F.S.;
2412 revising the requirements for board of administration
2413 and shareholder meetings; amending s. 719.108, F.S.;
2414 revising applicability; revising the effect of a claim
2415 of lien; creating s. 719.129, F.S.; authorizing
2416 cooperative associations to conduct elections by
2417 electronic voting under certain conditions; providing
2418 that a member voting electronically is counted toward



2419 a quorum; providing applicability; providing that a
2420 unit owner's consent to online voting is valid unit
2421 the unit owner opts out according to specified
2422 procedures; amending s. 719.303, F.S.; providing that
2423 a fine may be levied by the board or its authorized
2424 designee under certain conditions; revising the
2425 requirements for levying a fine or suspension;
2426 amending s. 720.301, F.S.; revising the definition of
2427 the term "governing documents"; creating s. 720.3015,
2428 F.S.; providing a short title; amending s. 720.303,
2429 F.S.; authorizing a homeowners' association to provide
2430 notice by electronic transmission in certain
2431 circumstances; amending s. 720.305, F.S.; revising the
2432 requirements for levying a fine or suspension;
2433 revising the application of certain provisions;
2434 amending s. 720.306, F.S.; revising the requirements
2435 for the adoption of amendments to the governing
2436 documents; revising the requirements for the election
2437 of directors; revising the requirements for board of
2438 director and member meetings; amending s. 720.3085,
2439 F.S.; providing that the association may recover from
2440 the parcel owner a reasonable charge imposed by a
2441 management or bookkeeping company or a collection
2442 agent which are incurred in connection with a
2443 delinquent assessment; providing that such charges
2444 must be liquidated, noncontingent, and based upon
2445 actual time expended; providing that fees for
2446 collection are not recoverable in a certain
2447 circumstance; specifying the hierarchy for the



406496

2448 application of payments received for collection
2449 services contracted for by the association; creating
2450 s. 720.317, F.S.; authorizing homeowners' associations
2451 to conduct elections by electronic voting under
2452 certain conditions; providing that a member voting
2453 electronically is counted toward a quorum; providing
2454 applicability; providing that a member's consent to
2455 online voting is valid unit the member opts out
2456 according to specified procedures; providing an

By the Committee on Regulated Industries; and Senator Ring

580-02525B-15

2015748c1

1 A bill to be entitled
 2 An act relating to residential properties; amending s.
 3 201.02, F.S.; providing that a certain deed, transfer,
 4 or conveyance from an owner of property is subject to
 5 certain taxes; amending s. 617.0721, F.S.; authorizing
 6 the use of a copy, facsimile transmission, or other
 7 reliable reproduction of an original proxy vote for
 8 certain purposes; amending s. 718.103, F.S.; revising
 9 and providing definitions; amending s. 718.111, F.S.;
 10 providing that the vote necessary to charge use fees
 11 for the use of the common elements or association
 12 property may be approved by a majority of the voting
 13 interests present, in person or by proxy, at a meeting
 14 of the association if a quorum has been established;
 15 revising the liability of unit owners under certain
 16 conditions; revising what constitutes official records
 17 of an association; amending s. 718.112, F.S.; revising
 18 the requirements for board of administration and unit
 19 owner meetings; clarifying the voting process for
 20 providing reserves; amending s. 718.113, F.S.;
 21 revising the term governing documents to condominium
 22 documents; amending s. 718.116, F.S.; revising the
 23 provisions relating to the liability of condominium
 24 unit owners and mortgagees; revising applicability;
 25 revising effect of a claim of lien; creating s.
 26 718.128, F.S.; authorizing condominium associations to
 27 conduct elections by electronic voting under certain
 28 conditions; providing that a member voting
 29 electronically is counted toward a quorum; requiring

Page 1 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

30 that the bylaws allow electronic voting of some or all
 31 matters; providing a definition; amending s. 718.301,
 32 F.S.; adding conditions under which certain unit
 33 owners are entitled to elect at least a majority of
 34 the members of the board of administration of an
 35 association; requiring a bulk-unit purchaser to
 36 relinquish control of the association under certain
 37 circumstances; requiring a bulk-unit purchaser to
 38 deliver certain items, at the bulk-unit purchaser's
 39 expense, during the transfer of association control
 40 from the bulk-unit purchaser; amending s. 718.302,
 41 F.S.; revising the conditions under which certain
 42 grants, reservations, or contracts made by an
 43 association may be cancelled; prohibiting a lender-
 44 unit purchaser from voting on cancellation of certain
 45 grants, reservations, or contracts while the
 46 association is under control of that lender-unit
 47 purchaser; amending s. 718.303, F.S.; providing that a
 48 fine may be levied by the board or its authorized
 49 designee under certain conditions; revising the
 50 requirements for levying a fine or suspension;
 51 amending s. 718.501, F.S.; conforming provisions of
 52 chapter 718, F.S., relating to the enforcement powers
 53 of the Division of Florida Condominiums, Timeshares,
 54 and Mobile Homes; creating s. 718.709, F.S.; providing
 55 applicability of the provisions relating to the
 56 Distressed Condominium Relief Act; creating part VIII
 57 of ch. 718, F.S.; providing legislative intent;
 58 providing definitions; authorizing a bulk-unit

Page 2 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

59 purchaser to exercise certain developer rights;
 60 requiring a bulk-unit purchaser to pay a working
 61 capital contribution under certain circumstances;
 62 providing applicability; authorizing a lender-unit
 63 purchaser to exercise any developer rights he or she
 64 acquires; requiring a bulk-unit purchaser and a
 65 lender-unit purchaser to comply with specified
 66 provisions under ch. 718, F.S.; limiting the rights of
 67 bulk-unit purchasers and lender-unit purchasers to
 68 vote on reserves or funding of reserves; prohibiting
 69 the transfer of such voting rights; providing
 70 assessment liability for bulk-unit purchasers and
 71 lender-unit purchasers; providing for suspension of a
 72 director who has been elected or appointed by a bulk-
 73 unit purchaser in certain circumstances; specifying
 74 amendments and alterations for which a majority
 75 approval of unit owners is required; requiring consent
 76 of a bulk-unit purchaser, lender-unit purchaser, or
 77 developer to certain amendments; requiring certain
 78 warranties and disclosures; requiring an architect or
 79 engineer to disclose specified information in a
 80 condition report under certain circumstances;
 81 subjecting multiple bulk-unit purchasers to joint and
 82 several liability; prohibiting a board of
 83 administration, a majority of which is elected by a
 84 bulk-unit purchaser, from resolving certain
 85 construction disputes unless other conditions are
 86 satisfied; providing that a bulk-unit purchaser or
 87 lender-unit purchaser who does not comply with ch.

Page 3 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

88 718, F.S., forfeits all protections or exemptions
 89 under ch. 718, F.S.; clarifying conditions under which
 90 a bulk-unit purchaser must deliver certain items
 91 during the transfer of association control from the
 92 bulk-unit purchaser; providing conditions by which a
 93 person may become a bulk-unit purchaser following
 94 acquisition of title to timeshare interests that are
 95 or ultimately will be included in a timeshare plan;
 96 requiring disclosure to purchasers by certain bulk-
 97 unit purchasers of timeshare interests; amending s.
 98 719.104, F.S.; revising what constitutes the official
 99 records of an association; amending s. 719.106, F.S.;
 100 revising the requirements for board of administration
 101 and shareholder meetings; amending s. 719.108, F.S.;
 102 revising applicability; revising the effect of a claim
 103 of lien; creating s. 719.129, F.S.; authorizing
 104 cooperative associations to conduct elections by
 105 electronic voting under certain conditions; providing
 106 that a member voting electronically is counted toward
 107 a quorum; requiring that the bylaws allow electronic
 108 voting of some or all matters; providing a definition;
 109 amending s. 719.303, F.S.; providing that a fine may
 110 be levied by the board or its authorized designee
 111 under certain conditions; revising the requirements
 112 for levying a fine or suspension; amending s. 720.301,
 113 F.S.; revising the definition of the term "governing
 114 documents"; creating s. 720.3015, F.S.; providing a
 115 short title; amending s. 720.305, F.S.; revising the
 116 requirements for levying a fine or suspension;

Page 4 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

117 revising the application of certain provisions;
 118 amending s. 720.306, F.S.; revising the requirements
 119 for the adoption of amendments to the governing
 120 documents; revising the requirements for the election
 121 of directors; revising the requirements for board of
 122 director and member meetings; amending s. 720.3085,
 123 F.S.; providing that the association may recover from
 124 the parcel owner a reasonable charge imposed by a
 125 management or bookkeeping company or a collection
 126 agent which are incurred in connection with a
 127 delinquent assessment; providing that such charges
 128 must be liquidated, noncontingent, and based upon
 129 actual time expended; providing that fees for
 130 collection are not recoverable in a certain
 131 circumstance; specifying the hierarchy for the
 132 application of payments received for collection
 133 services contracted for by the association; creating
 134 s. 720.317, F.S.; authorizing homeowners' associations
 135 to conduct elections by electronic voting under
 136 certain conditions; providing that a member voting
 137 electronically is counted toward a quorum; requiring
 138 that the bylaws allow electronic voting of some or all
 139 matters; providing a definition; providing an
 140 effective date.

142 Be It Enacted by the Legislature of the State of Florida:

143
 144 Section 1. Subsection (9) of section 201.02, Florida
 145 Statutes, is amended to read:

Page 5 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

146 201.02 Tax on deeds and other instruments relating to real
 147 property or interests in real property.-

148 (9) (a) A certificate of title issued by the clerk of court
 149 under s. 45.031(5) in a judicial sale of real property under an
 150 order or final judgment issued pursuant to a foreclosure
 151 proceeding is subject to the tax imposed by subsection (1).
 152 However, the amount of the tax shall be computed based solely on
 153 the amount of the highest and best bid received for the property
 154 at the foreclosure sale. This paragraph ~~subsection~~ is intended
 155 to clarify existing law and shall be applied retroactively.

156 (b) A deed, transfer, or conveyance from an owner of
 157 property, subject to assessments authorized by chapter 718,
 158 chapter 719, chapter 720, or chapter 721, to an association
 159 having lien rights against the property in lieu of the
 160 foreclosure of an assessment lien held by the association
 161 against such property is subject to the tax imposed by
 162 subsection (1). However, the amount of the tax shall be computed
 163 based solely on the amount of the unpaid assessments that are
 164 due and owing to the association on the date of said deed,
 165 transfer, or conveyance.

166 Section 2. Subsection (2) of section 617.0721, Florida
 167 Statutes, is amended to read:

168 617.0721 Voting by members.-

169 (2) A member who is entitled to vote may vote in person or,
 170 unless the articles of incorporation or the bylaws otherwise
 171 provide, may vote by proxy executed in writing by the member or
 172 by his or her duly authorized attorney in fact. Notwithstanding
 173 any provision to the contrary in the articles of incorporation
 174 or bylaws, any copy, facsimile transmission, or other reliable

Page 6 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

175 reproduction of the original proxy may be substituted or used in
 176 lieu of the original proxy for any purpose for which the
 177 original proxy could be used if the copy, facsimile
 178 transmission, or other reproduction is a complete reproduction
 179 of the entire proxy. An appointment of a proxy is not valid
 180 after 11 months following the date of its execution unless
 181 otherwise provided in the proxy.

182 (a) If directors or officers are to be elected by members,
 183 the bylaws may provide that such elections may be conducted by
 184 mail.

185 (b) A corporation may reject a vote, consent, waiver, or
 186 proxy appointment if the secretary or other officer or agent
 187 authorized to tabulate votes, acting in good faith, has a
 188 reasonable basis for doubting the validity of the signature on
 189 it or the signatory's authority to sign for the member.

190 Section 3. Present subsections (12) through (30) of section
 191 718.103, Florida Statutes, are redesignated as subsections (13)
 192 through (31), respectively, a new subsection (12) is added to
 193 that section, and present subsection (16) of that section is
 194 amended, to read:

195 718.103 Definitions.—As used in this chapter, the term:

196 (12) "Condominium documents" means:

197 (a) The recorded declaration of condominium for a community
 198 and all duly adopted and recorded amendments, supplements, and
 199 exhibits of the declaration;

200 (b) The recorded articles of incorporation and bylaws of
 201 the condominium association and any duly adopted and recorded
 202 amendments of the declaration; and

203 (c) Rules and regulations adopted under the authority of

580-02525B-15

2015748c1

204 the recorded declaration of condominium, articles of
 205 incorporation or bylaws, and duly adopted amendments of the
 206 declaration.

207 ~~(17)-(16)~~ "Developer" means a person who creates a
 208 condominium or offers condominium parcels for sale or lease in
 209 the ordinary course of business, but does not include:

210 (a) An owner or lessee of a condominium or cooperative unit
 211 who has acquired the unit for his or her own occupancy;

212 (b) A cooperative association that creates a condominium by
 213 conversion of an existing residential cooperative after control
 214 of the association has been transferred to the unit owners if,
 215 following the conversion, the unit owners are the same persons
 216 who were unit owners of the cooperative and no units are offered
 217 for sale or lease to the public as part of the plan of
 218 conversion;

219 (c) A bulk-unit purchaser, lender-unit purchaser, bulk
 220 assignee, or bulk buyer as defined in s. 718.802 ~~718.703~~;

221 (d) A person who acquires title to 7 or fewer units
 222 operated by the same association consisting of 40 or fewer units
 223 or who acquires title to less than 20 percent of the units
 224 operated by the same association consisting of more than 40
 225 units, regardless of whether that person offers any of those
 226 units for sale;

227 (e) The trustee and any related trust association of a
 228 timeshare trust, interests in which are qualified as timeshare
 229 estates pursuant to s. 721.08 or s. 721.53; or

230 ~~(f)-(d)~~ A state, county, or municipal entity acting as a
 231 lessor and not otherwise named as a developer in the declaration
 232 of condominium.

580-02525B-15

2015748c1

233 Section 4. Subsection (4), paragraph (j) of subsection (11)
 234 and paragraph (a) of subsection (12) of section 718.111, Florida
 235 Statutes, are amended to read:

236 718.111 The association.—

237 (4) ASSESSMENTS; MANAGEMENT OF COMMON ELEMENTS.—The
 238 association has the power to make and collect assessments and to
 239 lease, maintain, repair, and replace the common elements or the
 240 association property; however, the association may not charge a
 241 use fee against a unit owner for the use of common elements or
 242 association property unless otherwise provided for in the
 243 declaration of condominium or by a majority of the voting
 244 interests present, in person or by proxy, at a meeting of the
 245 association if a quorum has been established ~~vote of the~~
 246 ~~association~~ or unless the charges relate to expenses incurred by
 247 an owner having exclusive use of the common elements or
 248 association property.

249 (11) INSURANCE.—In order to protect the safety, health, and
 250 welfare of the people of the State of Florida and to ensure
 251 consistency in the provision of insurance coverage to
 252 condominiums and their unit owners, this subsection applies to
 253 every residential condominium in the state, regardless of the
 254 date of its declaration of condominium. It is the intent of the
 255 Legislature to encourage lower or stable insurance premiums for
 256 associations described in this subsection.

257 (j) Any portion of the condominium property that must be
 258 insured by the association against property loss pursuant to
 259 paragraph (f) which is damaged by an insurable event shall be
 260 reconstructed, repaired, or replaced as necessary by the
 261 association as a common expense. In the absence of an insurable

Page 9 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

262 event, the association or the unit owners shall be responsible
 263 for the reconstruction, repair, or replacement, as determined by
 264 the maintenance provisions of the declaration or bylaws. All
 265 property insurance deductibles, ~~uninsured losses,~~ and other
 266 damages in excess of property insurance coverage under the
 267 property insurance policies maintained by the association are a
 268 common expense of the condominium, except that:

269 1. A unit owner is responsible for the costs of repair or
 270 replacement of any portion of the condominium property not paid
 271 by insurance proceeds if such damage is caused by intentional
 272 conduct, negligence, or failure to comply with the terms of the
 273 declaration or the rules of the association by a unit owner, the
 274 members of his or her family, unit occupants, tenants, guests,
 275 or invitees, without compromise of the subrogation rights of the
 276 insurer.

277 2. The provisions of subparagraph 1. regarding the
 278 financial responsibility of a unit owner for the costs of
 279 repairing or replacing other portions of the condominium
 280 property also apply to the costs of repair or replacement of
 281 personal property of other unit owners or the association, as
 282 well as other property, whether real or personal, which the unit
 283 owners are required to insure.

284 3. To the extent the cost of repair or reconstruction for
 285 which the unit owner is responsible under this paragraph is
 286 reimbursed to the association by insurance proceeds, and the
 287 association has collected the cost of such repair or
 288 reconstruction from the unit owner, the association shall
 289 reimburse the unit owner without the waiver of any rights of
 290 subrogation.

Page 10 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

291 4. The association is not obligated to pay for
 292 reconstruction or repairs of property losses as a common expense
 293 if the property losses were known or should have been known to a
 294 unit owner and were not reported to the association until after
 295 the insurance claim of the association for that property was
 296 settled or resolved with finality, or denied because it was
 297 untimely filed.

298 (12) OFFICIAL RECORDS.—

299 (a) From the inception of the association, the association
 300 shall maintain each of the following items, if applicable, which
 301 constitutes the official records of the association:

302 1. A copy of the plans, permits, warranties, and other
 303 items provided by the developer pursuant to s. 718.301(4).

304 2. A photocopy of the recorded declaration of condominium
 305 of each condominium operated by the association and each
 306 amendment to each declaration.

307 3. A photocopy of the recorded bylaws of the association
 308 and each amendment to the bylaws.

309 4. A certified copy of the articles of incorporation of the
 310 association, or other documents creating the association, and
 311 each amendment thereto.

312 5. A copy of the current rules of the association.

313 6. A book or books that contain the minutes of all meetings
 314 of the association, the board of administration, and the unit
 315 owners, which minutes must be retained for at least 7 years.

316 7. A current roster of all unit owners and their mailing
 317 addresses, unit identifications, voting certifications, and, if
 318 known, telephone numbers. The association shall also maintain
 319 the electronic mailing addresses and facsimile numbers of unit

Page 11 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

320 owners consenting to receive notice by electronic transmission.
 321 The electronic mailing addresses and facsimile numbers are not
 322 accessible to unit owners if consent to receive notice by
 323 electronic transmission is not provided in accordance with
 324 subparagraph (c)5. However, the association is not liable for an
 325 inadvertent disclosure of the electronic mail address or
 326 facsimile number for receiving electronic transmission of
 327 notices.

328 8. All current insurance policies of the association and
 329 condominiums operated by the association.

330 9. A current copy of any management agreement, lease, or
 331 other contract to which the association is a party or under
 332 which the association or the unit owners have an obligation or
 333 responsibility.

334 10. Bills of sale or transfer for all property owned by the
 335 association.

336 11. Accounting records for the association and separate
 337 accounting records for each condominium that the association
 338 operates. All accounting records must be maintained for at least
 339 7 years. Any person who knowingly or intentionally defaces or
 340 destroys such records, or who knowingly or intentionally fails
 341 to create or maintain such records, with the intent of causing
 342 harm to the association or one or more of its members, is
 343 personally subject to a civil penalty pursuant to s.
 344 718.501(1)(d). The accounting records must include, but are not
 345 limited to:

346 a. Accurate, itemized, and detailed records of all receipts
 347 and expenditures.

348 b. A current account and a monthly, bimonthly, or quarterly

Page 12 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

349 statement of the account for each unit designating the name of
 350 the unit owner, the due date and amount of each assessment, the
 351 amount paid on the account, and the balance due.

352 c. All audits, reviews, accounting statements, and
 353 financial reports of the association or condominium.

354 d. All contracts for work to be performed. Bids for work to
 355 be performed are also considered official records and must be
 356 maintained by the association.

357 12. Ballots, sign-in sheets, voting proxies, and all other
 358 papers relating to voting by unit owners, which must be
 359 maintained for 1 year from the date of the election, vote, or
 360 meeting to which the document relates, notwithstanding paragraph
 361 (b).

362 13. All rental records if the association is acting as
 363 agent for the rental of condominium units.

364 14. A copy of the current question and answer sheet as
 365 described in s. 718.504.

366 15. All other written records of the association not
 367 specifically included in the foregoing which are related to the
 368 operation of the association.

369 16. A copy of the inspection report as described in s.
 370 718.301(4)(p).

371 Section 5. Paragraphs (c), (d), and (f) of subsection (2)
 372 of section 718.112, Florida Statutes, are amended to read:

373 718.112 Bylaws.—

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

377 (c) *Board of administration meetings.*—Meetings of the board

Page 13 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

378 of administration at which a quorum of the members is present
 379 are open to all unit owners. Members of the board of
 380 administration may use e-mail as a means of communication but
 381 may not cast a vote on an association matter via e-mail. A unit
 382 owner may tape record or videotape the meetings; however, a unit
 383 owner may not post the recordings on any website or other media
 384 that can readily be viewed by persons who are not members of the
 385 association. The right to attend such meetings includes the
 386 right to speak at such meetings with reference to all designated
 387 agenda items. The division shall adopt reasonable rules
 388 governing the tape recording and videotaping of the meeting. The
 389 association may adopt written reasonable rules governing the
 390 frequency, duration, and manner of unit owner statements.

391 1. Adequate notice of all board meetings, which must
 392 specifically identify all agenda items, must be posted
 393 conspicuously on the condominium property or association
 394 property at least 48 continuous hours before the meeting except
 395 in an emergency. If 20 percent of the voting interests petition
 396 the board to address an item of business, the board, within 60
 397 days after receipt of the petition, shall place the item on the
 398 agenda at its next regular board meeting or at a special meeting
 399 called for that purpose. An item not included on the notice may
 400 be taken up on an emergency basis by a vote of at least a
 401 majority plus one of the board members. Such emergency action
 402 must be noticed and ratified at the next regular board meeting.
 403 However, written notice of a meeting at which a nonemergency
 404 special assessment or an amendment to rules regarding unit use
 405 will be considered must be mailed, delivered, or electronically
 406 transmitted to the unit owners and posted conspicuously on the

Page 14 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

407 condominium property or association property at least 14 days
 408 before the meeting. Evidence of compliance with this 14-day
 409 notice requirement must be made by an affidavit executed by the
 410 person providing the notice and filed with the official records
 411 of the association. Upon notice to the unit owners, the board
 412 shall, by duly adopted rule, designate a specific location on
 413 the condominium or association property where all notices of
 414 board meetings must be posted. If there is no condominium
 415 property or association property where notices can be posted,
 416 notices shall be mailed, delivered, or electronically
 417 transmitted to each unit owner at least 14 days before the
 418 meeting. In lieu of or in addition to the physical posting of
 419 the notice on the condominium property or association property,
 420 the association may, by reasonable rule, adopt a procedure for
 421 conspicuously posting and repeatedly broadcasting the notice and
 422 the agenda on a closed-circuit cable television system serving
 423 the condominium association. However, if broadcast notice is
 424 used in lieu of a notice physically posted on condominium
 425 property or association property, the notice and agenda must be
 426 broadcast at least four times every broadcast hour of each day
 427 that a posted notice is otherwise required under this section.
 428 If broadcast notice is provided, the notice and agenda must be
 429 broadcast in a manner and for a sufficient continuous length of
 430 time so as to allow an average reader to observe the notice and
 431 read and comprehend the entire content of the notice and the
 432 agenda. Notice of any meeting in which regular or special
 433 assessments against unit owners are to be considered must
 434 specifically state that assessments will be considered and
 435 provide the nature, estimated cost, and description of the

Page 15 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

436 purposes for such assessments.
 437 2. Meetings of a committee to take final action on behalf
 438 of the board or make recommendations to the board regarding the
 439 association budget are subject to this paragraph. Meetings of a
 440 committee that does not take final action on behalf of the board
 441 or make recommendations to the board regarding the association
 442 budget are subject to this section, unless those meetings are
 443 exempted from this section by the bylaws of the association.
 444 3. Notwithstanding any other law, the requirement that
 445 board meetings and committee meetings be open to the unit owners
 446 does not apply to:
 447 a. Meetings between the board or a committee and the
 448 association's attorney, with respect to proposed or pending
 449 litigation, if the meeting is held for the purpose of seeking or
 450 rendering legal advice; or
 451 b. Board meetings held for the purpose of discussing
 452 personnel matters.
 453 (d) *Unit owner meetings.*—
 454 1. An annual meeting of the unit owners shall be held at
 455 the location provided in the association bylaws and, if the
 456 bylaws are silent as to the location, the meeting shall be held
 457 within 45 miles of the condominium property. However, such
 458 distance requirement does not apply to an association governing
 459 a timeshare condominium.
 460 2. Unless the bylaws provide otherwise, a vacancy on the
 461 board caused by the expiration of a director's term shall be
 462 filled by electing a new board member, and the election must be
 463 by secret ballot. An election is not required if the number of
 464 vacancies equals or exceeds the number of candidates. For

Page 16 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

465 purposes of this paragraph, the term "candidate" means an
 466 eligible person who has timely submitted the written notice, as
 467 described in sub-subparagraph 4.a., of his or her intention to
 468 become a candidate. Except in a timeshare or nonresidential
 469 condominium, or if the staggered term of a board member does not
 470 expire until a later annual meeting, or if all members' terms
 471 would otherwise expire but there are no candidates, the terms of
 472 all board members expire at the annual meeting, and such members
 473 may stand for reelection unless prohibited by the bylaws. If the
 474 bylaws or articles of incorporation permit terms of no more than
 475 2 years, the association board members may serve 2-year terms.
 476 If the number of board members whose terms expire at the annual
 477 meeting equals or exceeds the number of candidates, the
 478 candidates become members of the board effective upon the
 479 adjournment of the annual meeting. Unless the bylaws provide
 480 otherwise, any remaining vacancies shall be filled by the
 481 affirmative vote of the majority of the directors making up the
 482 newly constituted board even if the directors constitute less
 483 than a quorum or there is only one director. In a residential
 484 condominium association of more than 10 units or in a
 485 residential condominium association that does not include
 486 timeshare units or timeshare interests, coowners of a unit may
 487 not serve as members of the board of directors at the same time
 488 unless they own more than one unit or unless there are not
 489 enough eligible candidates to fill the vacancies on the board at
 490 the time of the vacancy. A unit owner in a residential
 491 condominium desiring to be a candidate for board membership must
 492 comply with sub-subparagraph 4.a. and must be eligible to be a
 493 candidate to serve on the board of directors at the time of the

Page 17 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

494 deadline for submitting a notice of intent to run in order to
 495 have his or her name listed as a proper candidate on the ballot
 496 or to serve on the board. A person who has been suspended or
 497 removed by the division under this chapter, or who is delinquent
 498 in the payment of any monetary obligation due to the
 499 association, is not eligible to be a candidate for board
 500 membership and may not be listed on the ballot. A person who has
 501 been convicted of any felony in this state or in a United States
 502 District or Territorial Court, or who has been convicted of any
 503 offense in another jurisdiction which would be considered a
 504 felony if committed in this state, is not eligible for board
 505 membership unless such felon's civil rights have been restored
 506 for at least 5 years as of the date such person seeks election
 507 to the board. The validity of an action by the board is not
 508 affected if it is later determined that a board member is
 509 ineligible for board membership due to having been convicted of
 510 a felony. This subparagraph does not limit the term of a member
 511 of the board of a nonresidential condominium.

512 3. The bylaws must provide the method of calling meetings
 513 of unit owners, including annual meetings. Written notice must
 514 include an agenda, must be mailed, hand delivered, or
 515 electronically transmitted to each unit owner at least 14 days
 516 before the annual meeting, and must be posted in a conspicuous
 517 place on the condominium property or association property at
 518 least 14 continuous days before the annual meeting. Upon notice
 519 to the unit owners, the board shall, by duly adopted rule,
 520 designate a specific location on the condominium property or
 521 association property where all notices of unit owner meetings
 522 shall be posted. This requirement does not apply if there is no

Page 18 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

523 condominium property or association property for posting
 524 notices. In lieu of, or in addition to, the physical posting of
 525 meeting notices, the association may, by reasonable rule, adopt
 526 a procedure for conspicuously posting and repeatedly
 527 broadcasting the notice and the agenda on a closed-circuit cable
 528 television system serving the condominium association. However,
 529 if broadcast notice is used in lieu of a notice posted
 530 physically on the condominium property or association property,
 531 the notice and agenda must be broadcast at least four times
 532 every broadcast hour of each day that a posted notice is
 533 otherwise required under this section. If broadcast notice is
 534 provided, the notice and agenda must be broadcast in a manner
 535 and for a sufficient continuous length of time so as to allow an
 536 average reader to observe the notice and read and comprehend the
 537 entire content of the notice and the agenda. Unless a unit owner
 538 waives in writing the right to receive notice of the annual
 539 meeting, such notice must be hand delivered, mailed, or
 540 electronically transmitted to each unit owner. Notice for
 541 meetings and notice for all other purposes must be mailed to
 542 each unit owner at the address last furnished to the association
 543 by the unit owner, or hand delivered to each unit owner.
 544 However, if a unit is owned by more than one person, the
 545 association must provide notice to the address that the
 546 developer identifies for that purpose and thereafter as one or
 547 more of the owners of the unit advise the association in
 548 writing, or if no address is given or the owners of the unit do
 549 not agree, to the address provided on the deed of record. An
 550 officer of the association, or the manager or other person
 551 providing notice of the association meeting, must provide an

Page 19 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

552 affidavit or United States Postal Service certificate of
 553 mailing, to be included in the official records of the
 554 association affirming that the notice was mailed or hand
 555 delivered in accordance with this provision.

556 4. The members of the board of a residential condominium
 557 shall be elected by written ballot or voting machine. Proxies
 558 may not be used in electing the board in general elections or
 559 elections to fill vacancies caused by recall, resignation, or
 560 otherwise, unless otherwise provided in this chapter. This
 561 subparagraph does not apply to an association governing a
 562 timeshare condominium.

563 a. At least 60 days before a scheduled election, the
 564 association shall mail, deliver, or electronically transmit, by
 565 separate association mailing or included in another association
 566 mailing, delivery, or transmission, including regularly
 567 published newsletters, to each unit owner entitled to a vote, a
 568 first notice of the date of the election. A unit owner or other
 569 eligible person desiring to be a candidate for the board must
 570 give written notice of his or her intent to be a candidate to
 571 the association at least 40 days before a scheduled election.
 572 Together with the written notice and agenda as set forth in
 573 subparagraph 3., the association shall mail, deliver, or
 574 electronically transmit a second notice of the election to all
 575 unit owners entitled to vote, together with a ballot that lists
 576 all candidates. Upon request of a candidate, an information
 577 sheet, no larger than 8 1/2 inches by 11 inches, which must be
 578 furnished by the candidate at least 35 days before the election,
 579 must be included with the mailing, delivery, or transmission of
 580 the ballot, with the costs of mailing, delivery, or electronic

Page 20 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

581 transmission and copying to be borne by the association. The
 582 association is not liable for the contents of the information
 583 sheets prepared by the candidates. In order to reduce costs, the
 584 association may print or duplicate the information sheets on
 585 both sides of the paper. The division shall by rule establish
 586 voting procedures consistent with this sub-subparagraph,
 587 including rules establishing procedures for giving notice by
 588 electronic transmission and rules providing for the secrecy of
 589 ballots. Elections shall be decided by a plurality of ballots
 590 cast. There is no quorum requirement; however, at least 20
 591 percent of the eligible voters must cast a ballot in order to
 592 have a valid election. A unit owner may not permit any other
 593 person to vote his or her ballot, and any ballots improperly
 594 cast are invalid. A unit owner who violates this provision may
 595 be fined by the association in accordance with s. 718.303. A
 596 unit owner who needs assistance in casting the ballot for the
 597 reasons stated in s. 101.051 may obtain such assistance. The
 598 regular election must occur on the date of the annual meeting.
 599 Notwithstanding this sub-subparagraph, an election is not
 600 required unless more candidates file notices of intent to run or
 601 are nominated than board vacancies exist.

602 b. Within 90 days after being elected or appointed to the
 603 board of an association of a residential condominium, each newly
 604 elected or appointed director shall certify in writing to the
 605 secretary of the association that he or she has read the
 606 association's declaration of condominium, articles of
 607 incorporation, bylaws, and current written policies; that he or
 608 she will work to uphold such documents and policies to the best
 609 of his or her ability; and that he or she will faithfully

Page 21 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

610 discharge his or her fiduciary responsibility to the
 611 association's members. In lieu of this written certification,
 612 within 90 days after being elected or appointed to the board,
 613 the newly elected or appointed director may submit a certificate
 614 of having satisfactorily completed the educational curriculum
 615 administered by a division-approved condominium education
 616 provider within 1 year before or 90 days after the date of
 617 election or appointment. The written certification or
 618 educational certificate is valid and does not have to be
 619 resubmitted as long as the director serves on the board without
 620 interruption. A director of an association of a residential
 621 condominium who fails to timely file the written certification
 622 or educational certificate is suspended from service on the
 623 board until he or she complies with this sub-subparagraph. The
 624 board may temporarily fill the vacancy during the period of
 625 suspension. The secretary shall cause the association to retain
 626 a director's written certification or educational certificate
 627 for inspection by the members for 5 years after a director's
 628 election or the duration of the director's uninterrupted tenure,
 629 whichever is longer. Failure to have such written certification
 630 or educational certificate on file does not affect the validity
 631 of any board action.

632 c. Any challenge to the election process must be commenced
 633 within 60 days after the election results are announced.

634 5. Any approval by unit owners called for by this chapter
 635 or the applicable declaration or bylaws, including, but not
 636 limited to, the approval requirement in s. 718.111(8), must be
 637 made at a duly noticed meeting of unit owners and is subject to
 638 all requirements of this chapter or the applicable condominium

Page 22 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

639 documents relating to unit owner decisionmaking, except that
 640 unit owners may take action by written agreement, without
 641 meetings, on matters for which action by written agreement
 642 without meetings is expressly allowed by the applicable bylaws
 643 or declaration or any law that provides for such action.

644 6. Unit owners may waive notice of specific meetings if
 645 allowed by the applicable bylaws or declaration or any law. If
 646 authorized by the bylaws, notice of meetings of the board of
 647 administration, unit owner meetings, except unit owner meetings
 648 called to recall board members under paragraph (j), and
 649 committee meetings may be given by electronic transmission to
 650 unit owners who consent to receive notice by electronic
 651 transmission.

652 7. Unit owners have the right to participate in meetings of
 653 unit owners with reference to all designated agenda items.
 654 However, the association may adopt reasonable rules governing
 655 the frequency, duration, and manner of unit owner participation.

656 8. A unit owner may tape record or videotape a meeting of
 657 the unit owners subject to reasonable rules adopted by the
 658 division; however, a unit owner may not post the recording on
 659 any website or other media that can readily be viewed by persons
 660 who are not members of the association.

661 9. Unless otherwise provided in the bylaws, any vacancy
 662 occurring on the board before the expiration of a term may be
 663 filled by the affirmative vote of the majority of the remaining
 664 directors, even if the remaining directors constitute less than
 665 a quorum, or by the sole remaining director. In the alternative,
 666 a board may hold an election to fill the vacancy, in which case
 667 the election procedures must conform to sub-subparagraph 4.a.

Page 23 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

668 unless the association governs 10 units or fewer and has opted
 669 out of the statutory election process, in which case the bylaws
 670 of the association control. Unless otherwise provided in the
 671 bylaws, a board member appointed or elected under this section
 672 shall fill the vacancy for the unexpired term of the seat being
 673 filled. Filling vacancies created by recall is governed by
 674 paragraph (j) and rules adopted by the division.

675 10. This chapter does not limit the use of general or
 676 limited proxies, require the use of general or limited proxies,
 677 or require the use of a written ballot or voting machine for any
 678 agenda item or election at any meeting of a timeshare
 679 condominium association or nonresidential condominium
 680 association.

681 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
 682 association of 10 or fewer units may, by affirmative vote of a
 683 majority of the total voting interests, provide for different
 684 voting and election procedures in its bylaws, which may be by a
 685 proxy specifically delineating the different voting and election
 686 procedures. The different voting and election procedures may
 687 provide for elections to be conducted by limited or general
 688 proxy.

689 (f) *Annual budget.*—

691 1. The proposed annual budget of estimated revenues and
 692 expenses must be detailed and must show the amounts budgeted by
 693 accounts and expense classifications, including, at a minimum,
 694 any if applicable, but not limited to, those expenses listed in
 695 s. 718.504(21). A multicondominium association shall adopt a
 696 separate budget of common expenses for each condominium the

Page 24 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

697 association operates and shall adopt a separate budget of common
 698 expenses for the association. In addition, if the association
 699 maintains limited common elements with the cost to be shared
 700 only by those entitled to use the limited common elements as
 701 provided for in s. 718.113(1), the budget or a schedule attached
 702 to it must show the amount budgeted for this maintenance. If,
 703 after turnover of control of the association to the unit owners,
 704 any of the expenses listed in s. 718.504(21) are not applicable,
 705 they need not be listed.

706 2.a. In addition to annual operating expenses, the budget
 707 must include reserve accounts for capital expenditures and
 708 deferred maintenance. These accounts must include, but are not
 709 limited to, roof replacement, building painting, and pavement
 710 resurfacing, regardless of the amount of deferred maintenance
 711 expense or replacement cost, and ~~for~~ any other item that has a
 712 deferred maintenance expense or replacement cost that exceeds
 713 \$10,000. The amount to be reserved must be computed using a
 714 formula based upon estimated remaining useful life and estimated
 715 replacement cost or deferred maintenance expense of each reserve
 716 item. The association may adjust replacement reserve assessments
 717 annually to take into account any changes in estimates or
 718 extension of the useful life of a reserve item caused by
 719 deferred maintenance. This subsection does not apply to an
 720 adopted budget in which the members of an association have
 721 determined, by a majority vote at a duly called meeting of the
 722 association, to provide no reserves or less reserves than
 723 required by this subsection.

724 b. Before ~~However, prior to~~ turnover of control of an
 725 association by a developer to unit owners other than a developer

Page 25 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

726 pursuant to s. 718.301, the developer may vote the voting
 727 interests allocated to its units to waive the reserves or reduce
 728 the funding of reserves through the period expiring at the end
 729 of the second fiscal year after the fiscal year in which the
 730 certificate of a surveyor and mapper is recorded pursuant to s.
 731 718.104(4) (e) or an instrument that transfers title to a unit in
 732 the condominium which is not accompanied by a recorded
 733 assignment of developer rights in favor of the grantee of such
 734 unit is recorded, whichever occurs first, after which time
 735 reserves may be waived or reduced only upon the vote of a
 736 majority of all nondeveloper voting interests voting in person
 737 or by limited proxy at a duly called meeting of the association.
 738 If a meeting of the unit owners has been called to determine
 739 whether to waive or reduce the funding of reserves, and no such
 740 result is achieved or a quorum is not attained, the reserves
 741 included in the budget shall go into effect. After the turnover,
 742 the developer may vote its voting interest to waive or reduce
 743 the funding of reserves.

744 3. Reserve funds and any interest accruing thereon shall
 745 remain in the reserve account or accounts, and may be used only
 746 for authorized reserve expenditures unless their use for other
 747 purposes is approved in advance by a majority vote at a duly
 748 called meeting of the association. ~~Before~~ Prior to turnover of
 749 control of an association by a developer to unit owners other
 750 than the developer pursuant to s. 718.301, the developer-
 751 controlled association ~~may shall~~ not vote to use reserves for
 752 purposes other than those that for which they were intended
 753 without the approval of a majority of all nondeveloper voting
 754 interests, voting in person or by limited proxy at a duly called

Page 26 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

755 meeting of the association.

756 4. The only voting interests that are eligible to vote on
757 questions that involve waiving or reducing the funding of
758 reserves, or using existing reserve funds for purposes other
759 than purposes for which the reserves were intended, are the
760 voting interests of the units subject to assessment to fund the
761 reserves in question. Proxy questions relating to waiving or
762 reducing the funding of reserves or using existing reserve funds
763 for purposes other than purposes for which the reserves were
764 intended ~~must shall~~ contain the following statement in
765 capitalized, bold letters in a font size larger than any other
766 used on the face of the proxy ballot: WAIVING OF RESERVES, IN
767 WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING
768 RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF
769 UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

770 Section 6. Subsection (7) of section 718.113, Florida
771 Statutes, is amended to read:

772 718.113 Maintenance; limitation upon improvement; display
773 of flag; hurricane shutters and protection; display of religious
774 decorations.-

775 (7) Notwithstanding the provisions of this section or the
776 ~~condominium governing~~ documents of a condominium or a
777 multicondominium association, the board of administration may,
778 without any requirement for approval of the unit owners, install
779 upon or within the common elements or association property solar
780 collectors, clotheslines, or other energy-efficient devices
781 based on renewable resources for the benefit of the unit owners.

782 Section 7. Paragraphs (a) and (b) of subsection (1),
783 subsection (3), and paragraph (b) of subsection (5) of section

Page 27 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

784 718.116, Florida Statutes, are amended to read:

785 718.116 Assessments; liability; lien and priority;
786 interest; collection.-

787 (1) (a) A unit owner, regardless of how the unit owner has
788 ~~acquired his or her title has been acquired~~, including, but not
789 ~~limited to, by~~ purchase at a foreclosure sale or ~~by~~ deed in lieu
790 of foreclosure, is liable for all assessments ~~that which~~ come
791 due while he or she is the unit owner, including any special
792 assessments or installments on special assessments coming due
793 during the period of ownership, regardless of when the special
794 assessment was levied. Additionally, a unit owner is jointly and
795 severally liable with the previous unit owner for all unpaid
796 monthly and special assessments, interest and late fees on both
797 unpaid assessments and unpaid special assessments, and costs and
798 reasonable attorney fees incurred by the association in an
799 attempt to collect all such amounts that came due up to the time
800 of transfer of title. This joint and several liability of a
801 subsequent unit owner does not apply to an owner who acquires
802 title through purchase of a tax deed and is without prejudice to
803 any right the present unit owner may have to recover from the
804 previous unit owner the amounts paid by the present unit owner.
805 For the purposes of this ~~section paragraph~~, the term "previous
806 unit owner" does not include an association that acquires title
807 to a ~~unit delinquent property~~ through foreclosure or by deed in
808 lieu of foreclosure. A present unit owner's liability for unpaid
809 assessments, interest, late fees, and costs and reasonable
810 attorney fees is limited to any unpaid assessments, interest,
811 late fees, and costs and reasonable attorney fees that accrued
812 before the association acquired title to the ~~unit delinquent~~

Page 28 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

813 ~~property~~ through foreclosure or by deed in lieu of foreclosure.

814 (b)1. The liability of a first mortgagee or its successor
815 or assignees who acquire title to a unit by foreclosure or by
816 deed in lieu of foreclosure for the unpaid assessments,
817 interest, late fees, costs and reasonable attorney fees, and any
818 other fee, cost, or expense incurred by or on behalf of the
819 association in the collection process which ~~that~~ became due
820 before the mortgagee's acquisition of title is limited to the
821 lesser of:

822 a. The unit's unpaid common expenses and regular periodic
823 assessments which accrued or came due during the 12 months
824 immediately preceding the acquisition of title and for which
825 payment in full has not been received by the association; or
826 b. One percent of the original mortgage debt. The
827 provisions of this paragraph apply only if the first mortgagee
828 joined the association as a defendant in the foreclosure action.
829 Joinder of the association is not required if, on the date the
830 complaint is filed, the association was dissolved or did not
831 maintain an office or agent for service of process at a location
832 which was known to or reasonably discoverable by the mortgagee.

833 2. An association, or its successor or assignee, that
834 acquires title to a unit through the foreclosure of its lien for
835 assessments is not liable for any unpaid assessments, late fees,
836 interest, or reasonable attorney ~~attorney's~~ fees and costs that
837 came due before the association's acquisition of title in favor
838 of any other association, as defined in s. 718.103(2) or s.
839 720.301(9), which holds a superior lien interest on the unit.
840 This subparagraph is intended to clarify existing law.

841 (3) Assessments and installments on assessments which are

Page 29 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

842 not paid when due bear interest at the rate provided in the
843 declaration, from the due date until paid. The rate may not
844 exceed the rate allowed by law, and, if no rate is provided in
845 the declaration, interest accrues at the rate of 18 percent per
846 year. If provided by the declaration or bylaws, the association
847 may, in addition to such interest, charge an administrative late
848 fee of up to the greater of \$25 or 5 percent of each delinquent
849 installment for which the payment is late. The association may
850 also recover from the unit owner any reasonable charges imposed
851 upon the association under a written contract with its
852 management or bookkeeping company or collection agent which are
853 incurred in connection with collecting a delinquent assessment.
854 Such charges must be in a liquidated and noncontingent amount
855 and must be based on the actual time expended performing
856 necessary, nonduplicative services. Fees for collection are not
857 recoverable for the period after referral of the matter to an
858 association's legal counsel. Any payment received by an
859 association must be applied first to any interest accrued by the
860 association, then to any administrative late fee, then to any
861 costs and reasonable attorney ~~attorney's~~ fees incurred in
862 collection, then to any reasonable costs for collection services
863 contracted by the association, and then to the delinquent
864 assessment. The foregoing is applicable notwithstanding s.
865 673.3111, any purported accord and satisfaction, or any
866 restrictive endorsement, designation, or instruction placed on
867 or accompanying a payment. The preceding sentence is intended to
868 clarify existing law. A late fee is not subject to chapter 687
869 or s. 718.303(4).

870 (5)

Page 30 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

871 (b) To be valid, a claim of lien must state the description
 872 of the condominium parcel, the name of the record owner, the
 873 name and address of the association, the amount due, and the due
 874 dates. It must be executed and acknowledged by an officer or
 875 authorized agent of the association. The lien is not effective 1
 876 year after the claim of lien was recorded unless, within that
 877 time, an action to enforce the lien is commenced. The 1-year
 878 period is automatically extended for any length of time during
 879 which the association is prevented from filing a foreclosure
 880 action by an automatic stay resulting from a bankruptcy petition
 881 filed by the parcel owner or any other person claiming an
 882 interest in the parcel. The claim of lien secures all unpaid
 883 assessments that are due and that may accrue after the claim of
 884 lien is recorded and through the entry of a final judgment, as
 885 well as interest, authorized administrative late fees, and all
 886 reasonable costs and ~~attorney~~ ~~attorney's~~ fees incurred by the
 887 association incident to the collection process, including, but
 888 not limited to, any reasonable costs for collection services
 889 contracted for by the association. Upon payment in full, the
 890 person making the payment is entitled to a satisfaction of the
 891 lien.

892 Section 8. Section 718.128, Florida Statutes, is created to
 893 read:

894 718.128 Electronic voting.—The association may conduct
 895 elections by electronic voting if a member consents, in writing,
 896 to voting electronically and the following requirements are met:

897 (1) The association provides each member with:

898 (a) A method to authenticate the member's identity to the
 899 electronic voting system.

580-02525B-15

2015748c1

900 (b) A method to secure the member's vote from, among other
 901 things, malicious software and the ability of others to remotely
 902 monitor or control the electronic voting platform.

903 (c) A method to communicate with the electronic voting
 904 system.

905 (d) A method to review an electronic ballot before its
 906 transmission to the electronic voting system.

907 (e) A method to transmit an electronic ballot to the
 908 electronic voting system which ensures the secrecy and integrity
 909 of each ballot.

910 (f) A method to allow members to verify the authenticity of
 911 receipts sent from the electronic voting system.

912 (g) A method to confirm, at least 14 days before the voting
 913 deadline, that the member's electronic voting platform can
 914 successfully communicate with the electronic voting system.

915 (h) In the event of a disruption of the electronic voting
 916 system, the ability to vote by mail or to deliver a ballot in
 917 person.

918 (2) The association uses an electronic voting system that
 919 is:

920 (a) Accessible to members with disabilities.

921 (b) Secure from, among other things, malicious software and
 922 the ability of others to remotely monitor or control the system.

923 (c) Able to authenticate the member's identity.

924 (d) Able to communicate with each member's electronic
 925 voting platform.

926 (e) Able to authenticate the validity of each electronic
 927 ballot to ensure that the ballot is not altered in transit.

928 (f) Able to transmit a receipt from the electronic voting

580-02525B-15

2015748c1

929 system to each member who casts an electronic ballot.

930 (g) Able to permanently separate any authentication or
 931 identifying information from the electronic ballot, rendering it
 932 impossible to tie a ballot to a specific member.

933 (h) Able to allow the member to confirm that his or her
 934 ballot has been received and counted.

935 (i) Able to store and keep electronic ballots accessible to
 936 election officials for recount, inspection, and review purposes.

937 (3) A member voting electronically pursuant to this section
 938 shall be counted as being in attendance at the meeting for
 939 purposes of determining a quorum.

940 (4) The bylaws of an association must provide for and allow
 941 voting pursuant to this section before this section shall apply.
 942 This section may apply to some or all matters for which a vote
 943 of the membership is required.

944 Section 9. Subsections (1) and (4) of section 718.301,
 945 Florida Statutes, are amended to read:

946 718.301 Transfer of association control; claims of defect
 947 by association.—

948 (1) If unit owners other than the developer own 15 percent
 949 or more of the units ~~in a condominium~~ that ultimately will be
 950 operated ~~ultimately~~ by an association, as provided in the
 951 declaration, articles of incorporation, or bylaws as originally
 952 recorded, the unit owners other than the developer are entitled
 953 to elect at least one-third of the members of the board of
 954 administration of the association. Unit owners other than the
 955 developer are entitled to elect at least a majority of the
 956 members of the board of administration of an association, upon
 957 the first ~~to occur~~ ~~of any~~ of the following events that occur:

Page 33 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

958 (a) Three years after 50 percent of the units that
 959 ultimately will be operated ~~ultimately~~ by the association, as
 960 provided in the declaration, articles of incorporation, or
 961 bylaws as originally recorded, have been conveyed to
 962 purchasers.~~†~~

963 (b) Three months after 90 percent of the units that
 964 ultimately will be operated ~~ultimately~~ by the association, as
 965 provided in the declaration, articles of incorporation, or
 966 bylaws as originally recorded, have been conveyed to
 967 purchasers.~~†~~

968 (c) When all the units that ultimately will be operated
 969 ultimately by the association, as provided in the declaration,
 970 articles of incorporation, or bylaws as originally recorded,
 971 have been completed, some of them have been conveyed to
 972 purchasers, and none of the others is ~~are~~ being offered for sale
 973 by the developer in the ordinary course of business.~~†~~

974 (d) When some of the units have been conveyed to purchasers
 975 and none of the others is ~~are~~ being constructed or offered for
 976 sale by the developer in the ordinary course of business.~~†~~

977 (e) When the developer files a petition seeking protection
 978 in bankruptcy.~~†~~

979 (f) When a bulk-unit purchaser who owns a majority of the
 980 units that ultimately will be operated by the association, as
 981 provided in the declaration, articles of incorporation, or
 982 bylaws as originally recorded, files a petition seeking
 983 protection in bankruptcy.

984 (g) ~~(f)~~ When a receiver for the developer is appointed by a
 985 circuit court and is not discharged within 30 days after such
 986 appointment, unless the court determines within 30 days after

Page 34 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

987 appointment of the receiver that transfer of control would be
988 detrimental to the association or its members. ~~7-08~~

989 (h) When a receiver for a bulk-unit purchaser who owns a
990 majority of the units that ultimately will be operated by the
991 association, as provided in the declaration, articles of
992 incorporation, or bylaws as originally recorded, is appointed by
993 a circuit court and is not discharged within 30 days after such
994 appointment, unless the court determines within 30 days after
995 appointment of the receiver that transfer of control would be
996 detrimental to the association or its members.

997 (i) Five years after the date of recording of the first
998 conveyance to a bulk-unit purchaser who owns a majority of the
999 units that ultimately will be operated by the association, as
1000 provided in the declaration, articles of incorporation, or
1001 bylaws as originally recorded. Notwithstanding that unit owners
1002 other than the developer are entitled to elect a majority of the
1003 members of the board of administration and notwithstanding s.
1004 718.112(2)(f)2., 5 years after the date of recording of the
1005 first conveyance of a unit to a bulk-unit purchaser who owns a
1006 majority of the units, the bulk-unit purchaser may exercise the
1007 right to vote for each unit owned by the bulk-unit purchaser in
1008 the same manner as any other unit owner except for the purposes
1009 of reacquiring control of the association or electing or
1010 appointing a majority of the members of the board of
1011 administration.

1012 (j) ~~(g)~~ Seven years after the date of the recording of the
1013 certificate of a surveyor and mapper pursuant to s.
1014 718.104(4)(e) or the recording of an instrument that transfers
1015 title to a unit in the condominium which is not accompanied by a

Page 35 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1016 recorded assignment of developer rights in favor of the grantee
1017 of such unit, whichever occurs first; or, in the case of an
1018 association that ~~may~~ ultimately may operate more than one
1019 condominium, 7 years after the date of the recording of the
1020 certificate of a surveyor and mapper pursuant to s.
1021 718.104(4)(e) or the recording of an instrument that transfers
1022 title to a unit which is not accompanied by a recorded
1023 assignment of developer rights in favor of the grantee of such
1024 unit, whichever occurs first, for the first condominium it
1025 operates; or, in the case of an association operating a phase
1026 condominium created pursuant to s. 718.403, 7 years after the
1027 date of the recording of the certificate of a surveyor and
1028 mapper pursuant to s. 718.104(4)(e) or the recording of an
1029 instrument that transfers title to a unit which is not
1030 accompanied by a recorded assignment of developer rights in
1031 favor of the grantee of such unit, whichever occurs first.

1032
1033 The developer is entitled to elect at least one member of the
1034 board of administration of an association as long as the
1035 developer holds for sale in the ordinary course of business at
1036 least 5 percent, in condominiums with fewer than 500 units, and
1037 2 percent, in condominiums with more than 500 units, of the
1038 units in a condominium operated by the association. After the
1039 developer relinquishes control of the association, the developer
1040 may exercise the right to vote any developer-owned units in the
1041 same manner as any other unit owner except for purposes of
1042 reacquiring control of the association or selecting a the
1043 majority of the members of the board of administration.

1044 (4) At the time that unit owners other than the developer

Page 36 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1045 elect a majority of the members of the board of administration
 1046 of an association, the developer or bulk-unit purchaser shall
 1047 relinquish control of the association, and the unit owners shall
 1048 accept control. Simultaneously, or for the purposes of paragraph
 1049 (c) not more than 90 days thereafter, the developer or bulk-unit
 1050 purchaser shall deliver to the association, at the developer's
 1051 or bulk-unit purchaser's expense, all property of the unit
 1052 owners and of the association which is held or controlled by the
 1053 developer or bulk-unit purchaser, including, but not limited to,
 1054 the following items, if applicable, as to each condominium
 1055 operated by the association:

1056 (a)1. The original or a photocopy of the recorded
 1057 declaration of condominium and all amendments thereto. If a
 1058 photocopy is provided, it must be certified by affidavit of the
 1059 developer, a bulk-unit purchaser, or an officer or agent of the
 1060 developer or bulk-unit purchaser as being a complete copy of the
 1061 actual recorded declaration.

1062 2. A certified copy of the articles of incorporation of the
 1063 association or, if the association was created before ~~prior to~~
 1064 the effective date of this act and it is not incorporated,
 1065 copies of the documents creating the association.

1066 3. A copy of the bylaws.

1067 4. The minute books, including all minutes, and other books
 1068 and records of the association, if any.

1069 5. Any house rules and regulations that have been adopted
 1070 ~~promulgated~~.

1071 (b) Resignations of officers and members of the board of
 1072 administration who are required to resign because the developer
 1073 or bulk-unit purchaser is required to relinquish control of the

Page 37 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1074 association.

1075 (c) The financial records, including financial statements
 1076 of the association, and source documents from the incorporation
 1077 of the association through the date of turnover. The records
 1078 must be audited for the period from the incorporation of the
 1079 association or from the period covered by the last audit, if an
 1080 audit has been performed for each fiscal year since
 1081 incorporation, by an independent certified public accountant.
 1082 All financial statements must be prepared in accordance with
 1083 generally accepted accounting principles and must be audited in
 1084 accordance with generally accepted auditing standards, as
 1085 prescribed by the Florida Board of Accountancy, pursuant to
 1086 chapter 473. The accountant performing the audit shall examine
 1087 to the extent necessary supporting documents and records,
 1088 including the cash disbursements and related paid invoices, to
 1089 determine whether ~~if~~ expenditures were for association purposes
 1090 and the billings, cash receipts, and related records to
 1091 determine whether ~~that~~ the developer or bulk-unit purchaser was
 1092 charged and paid the proper amounts of assessments.

1093 (d) Association funds or control thereof.

1094 (e) All tangible personal property that is property of the
 1095 association, which is represented by the developer or bulk-unit
 1096 purchaser to be part of the common elements or which is
 1097 ostensibly part of the common elements, and an inventory of that
 1098 property.

1099 (f) A copy of the plans and specifications used ~~utilized~~ in
 1100 the construction or remodeling of improvements and the supplying
 1101 of equipment to the condominium and in the construction and
 1102 installation of all mechanical components serving the

Page 38 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1103 improvements and the site with a certificate in affidavit form
 1104 of the developer, the bulk-unit purchaser, or the developer's or
 1105 bulk-unit purchaser's agent or an architect or engineer
 1106 authorized to practice in this state that such plans and
 1107 specifications represent, to the best of his or her knowledge
 1108 and belief, the actual plans and specifications used ~~utilized~~ in
 1109 the construction and improvement of the condominium property and
 1110 for the construction and installation of the mechanical
 1111 components serving the improvements. If the condominium property
 1112 has been declared a condominium more than 3 years after the
 1113 completion of construction or remodeling of the improvements,
 1114 ~~the requirements of this paragraph~~ does ~~de~~ not apply.

1115 (g) A list of the names and addresses of all contractors,
 1116 subcontractors, and suppliers used ~~utilized~~ in the construction
 1117 or remodeling of the improvements and in the landscaping of the
 1118 condominium or association property which the developer or bulk-
 1119 unit purchaser had knowledge of at any time in the development
 1120 of the condominium.

1121 (h) Insurance policies.

1122 (i) Copies of any certificates of occupancy that may have
 1123 been issued for the condominium property.

1124 (j) Any other permits applicable to the condominium
 1125 property which have been issued by governmental bodies and are
 1126 in force or were issued within 1 year before ~~prior to~~ the date
 1127 the unit owners other than the developer or bulk-unit purchaser
 1128 took control of the association.

1129 (k) All written warranties of the contractor,
 1130 subcontractors, suppliers, and manufacturers, if any, that are
 1131 still effective.

Page 39 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1132 (l) A roster of unit owners and their addresses and
 1133 telephone numbers, if known, as shown on the developer's or
 1134 bulk-unit purchaser's records.

1135 (m) Leases of the common elements and other leases to which
 1136 the association is a party.

1137 (n) Employment contracts or service contracts in which the
 1138 association is one of the contracting parties or service
 1139 contracts in which the association or the unit owners have an
 1140 obligation or responsibility, directly or indirectly, to pay
 1141 some or all of the fee or charge of the person or persons
 1142 performing the service.

1143 (o) All other contracts to which the association is a
 1144 party.

1145 (p) A report included in the official records, under seal
 1146 of an architect or engineer authorized to practice in this
 1147 state, attesting to required maintenance, useful life, and
 1148 replacement costs of the following applicable common elements
 1149 comprising a turnover inspection report:

- 1150 1. Roof.
- 1151 2. Structure.
- 1152 3. Fireproofing and fire protection systems.
- 1153 4. Elevators.
- 1154 5. Heating and cooling systems.
- 1155 6. Plumbing.
- 1156 7. Electrical systems.
- 1157 8. Swimming pool or spa and equipment.
- 1158 9. Seawalls.
- 1159 10. Pavement and parking areas.
- 1160 11. Drainage systems.

Page 40 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1161 12. Painting.

1162 13. Irrigation systems.

1163 (q) A copy of the certificate of a surveyor and mapper
 1164 recorded pursuant to s. 718.104(4)(e) or the recorded instrument
 1165 that transfers title to a unit in the condominium which is not
 1166 accompanied by a recorded assignment of developer or bulk-unit
 1167 purchaser rights in favor of the grantee of such unit, whichever
 1168 occurred first.

1169 Section 10. Subsections (1) through (4) of section 718.302,
 1170 Florida Statutes, are amended to read:

1171 718.302 Agreements entered into by the association.-

1172 (1) A ~~Any~~ grant or reservation made by a declaration,
 1173 lease, or other document, and a ~~any~~ contract made by an
 1174 association before ~~prior to~~ assumption of control of the
 1175 association by unit owners other than the developer, a bulk-unit
 1176 purchaser, or a lender-unit purchaser, which ~~that~~ provides for
 1177 operation, maintenance, or management of a condominium
 1178 association or property serving the unit owners of a condominium
 1179 must ~~shall~~ be fair and reasonable, and such grant, reservation,
 1180 or contract may be canceled by unit owners other than the
 1181 developer or a bulk-unit purchaser. A lender-unit purchaser may
 1182 not vote on cancellation of a grant, reservation, or contract
 1183 made by the association while the association is under control
 1184 of that lender-unit purchaser.

1185 (a) If the association operates only one condominium and
 1186 the unit owners other than the developer, a bulk-unit purchaser,
 1187 or a lender-unit purchaser have assumed control of the
 1188 association, or if the unit owners other than the developer, a
 1189 bulk-unit purchaser, or a lender-unit purchaser own at least ~~not~~

Page 41 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1190 ~~less than~~ 75 percent of the voting interests in the condominium,
 1191 the cancellation shall be by concurrence of the owners of at
 1192 ~~least not less than~~ 75 percent of the voting interests other
 1193 than the voting interests owned by the developer, a bulk-unit
 1194 purchaser, or a lender-unit purchaser. If a grant, reservation,
 1195 or contract is so canceled and the unit owners other than the
 1196 developer or a bulk-unit purchaser have not assumed control of
 1197 the association, the association shall make a new contract or
 1198 otherwise provide for maintenance, management, or operation in
 1199 lieu of the canceled obligation, at the direction of the owners
 1200 of ~~not less than~~ a majority of the voting interests in the
 1201 condominium other than the voting interests owned by the
 1202 developer, a bulk-unit purchaser, or a lender-unit purchaser.

1203 (b) If the association operates more than one condominium
 1204 and the unit owners other than the developer, a bulk-unit
 1205 purchaser, or a lender-unit purchaser have not assumed control
 1206 of the association, and if the unit owners other than the
 1207 developer or a bulk-unit purchaser own at least 75 percent of
 1208 the voting interests in a condominium operated by the
 1209 association, any grant, reservation, or contract for
 1210 maintenance, management, or operation of buildings containing
 1211 the units in that condominium or of improvements used only by
 1212 the unit owners of that condominium may be canceled by
 1213 concurrence of the owners of at least 75 percent of the voting
 1214 interests in the condominium other than the voting interests
 1215 owned by the developer or a bulk-unit purchaser. ~~A~~ ~~No~~ grant,
 1216 reservation, or contract for maintenance, management, or
 1217 operation of recreational areas or any other property serving
 1218 more than one condominium, and operated by more than one

Page 42 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1219 association, may not be canceled except pursuant to paragraph
1220 (d).

1221 (c) If the association operates more than one condominium
1222 and the unit owners other than the developer, a bulk-unit
1223 purchaser, or a lender-unit purchaser have assumed control of
1224 the association, the cancellation shall be by concurrence of the
1225 owners of at least not less than 75 percent of the total number
1226 of voting interests in all condominiums operated by the
1227 association other than the voting interests owned by the
1228 developer or a bulk-unit purchaser.

1229 (d) If the owners of units in a condominium have the right
1230 to use property in common with owners of units in other
1231 condominiums and those condominiums are operated by more than
1232 one association, a ~~no~~ grant, reservation, or contract for
1233 maintenance, management, or operation of the property serving
1234 more than one condominium may not be canceled until the unit
1235 owners other than the developer, a bulk-unit purchaser, or a
1236 lender-unit purchaser have assumed control of all of the
1237 associations operating the condominiums that are to be served by
1238 the recreational area or other property, after which
1239 cancellation may be effected by concurrence of the owners of at
1240 least not less than 75 percent of the total number of voting
1241 interests in those condominiums other than voting interests
1242 owned by the developer, a bulk-unit purchaser, or a lender-unit
1243 purchaser.

1244 (2) A ~~Any~~ grant or reservation made by a declaration,
1245 lease, or other document, or a ~~any~~ contract made by the
1246 developer or association before ~~prior to the time when~~ unit
1247 owners other than the developer or a bulk-unit purchaser elect a

Page 43 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1248 majority of the board of administration, which grant,
1249 reservation, or contract requires the association to purchase
1250 condominium property or to lease condominium property to another
1251 party, shall be deemed ratified unless rejected by a majority of
1252 the voting interests of the unit owners other than the developer
1253 or a bulk-unit purchaser within 18 months after the unit owners
1254 other than the developer or a bulk-unit purchaser elect a
1255 majority of the board of administration. A lender-unit purchaser
1256 may not vote on cancellation of a grant, reservation, or
1257 contract made by the association while the association is under
1258 control of that lender-unit purchaser. This subsection does not
1259 apply to a ~~any~~ grant or reservation made by a declaration under
1260 which ~~whereby~~ persons other than the developer or the
1261 developer's or bulk-unit purchaser's heirs, assigns, affiliates,
1262 directors, officers, or employees are granted the right to use
1263 the condominium property, if so long as such persons are
1264 obligated to pay at least, at a minimum, a proportionate share
1265 of the cost associated with such property.

1266 (3) A ~~Any~~ grant or reservation made by a declaration,
1267 lease, or other document, and a ~~any~~ contract made by an
1268 association, whether before or after assumption of control of
1269 the association by unit owners other than the developer, a bulk-
1270 unit purchaser, or a lender-unit purchaser, which ~~that~~ provides
1271 for operation, maintenance, or management of a condominium
1272 association or property serving the unit owners of a condominium
1273 may shall not be in conflict with the powers and duties of the
1274 association or the rights of the unit owners as provided in this
1275 chapter. This subsection is intended only as a clarification of
1276 existing law.

Page 44 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1277 (4) ~~A~~ Any grant or reservation made by a declaration,
 1278 lease, or other document, and ~~a~~ any contract made by an
 1279 association ~~before~~ prior to assumption of control of the
 1280 association by unit owners other than the developer, a bulk-unit
 1281 purchaser, or a lender-unit purchaser, must ~~shall~~ be fair and
 1282 reasonable.

1283 Section 11. Subsections (3), (4), and (5) of section
 1284 718.303, Florida Statutes, are amended, and subsection (7) is
 1285 added to that section, to read:

1286 718.303 Obligations of owners and occupants; remedies.—

1287 (3) The association may levy reasonable fines for the
 1288 failure of the owner of the unit or its occupant, licensee, or
 1289 invitee to comply with any provision of the declaration, the
 1290 association bylaws, or reasonable rules of the association. A
 1291 fine may not become a lien against a unit. A fine may be levied
 1292 by the board or its authorized designee on the basis of each day
 1293 of a continuing violation, with a single notice and opportunity
 1294 for hearing before an impartial committee as provided in
 1295 paragraph (b). However, the fine may not exceed \$100 per
 1296 violation, or \$1,000 in the aggregate.

1297 (a) An association may suspend, for a reasonable period of
 1298 time, the right of a unit owner, or a unit owner's tenant,
 1299 guest, or invitee, to use the common elements, common
 1300 facilities, or any other association property for failure to
 1301 comply with any provision of the declaration, the association
 1302 bylaws, or reasonable rules of the association. This paragraph
 1303 does not apply to limited common elements intended to be used
 1304 only by that unit, common elements needed to access the unit,
 1305 utility services provided to the unit, parking spaces, or

Page 45 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1306 elevators.

1307 (b) A fine or suspension levied by the board of
 1308 administration or its authorized designee may not be imposed
 1309 unless the ~~board association~~ first provides at least 14 days'
 1310 written notice and an opportunity for a hearing to the unit
 1311 owner and, if applicable, its occupant, licensee, or invitee.
 1312 The hearing must be held before an impartial ~~a~~ committee of
 1313 other unit owners who are neither board members, ~~nor~~ persons
 1314 residing in a board member's household, the board's authorized
 1315 designee, nor persons residing in the household of the board's
 1316 authorized designee. The role of the impartial committee is
 1317 limited to determining whether to confirm or reject the fine or
 1318 suspension levied by the board. If the impartial committee does
 1319 not agree, the fine or suspension may not be imposed.

1320 (4) If a unit owner is more than 90 days delinquent in
 1321 paying a fee, fine, or other monetary obligation due to the
 1322 association, the association may suspend the right of the unit
 1323 owner or the unit's occupant, licensee, or invitee to use common
 1324 elements, common facilities, or any other association property
 1325 until the fee, fine, or other monetary obligation is paid in
 1326 full. This subsection does not apply to limited common elements
 1327 intended to be used only by that unit, common elements needed to
 1328 access the unit, utility services provided to the unit, parking
 1329 spaces, or elevators. The notice and hearing requirements under
 1330 subsection (3) do not apply to suspensions imposed under this
 1331 subsection.

1332 (5) An association may suspend the voting rights of a unit
 1333 or member due to nonpayment of any fee, fine, or other monetary
 1334 obligation due to the association which is more than 90 days

Page 46 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1335 delinquent. A voting interest or consent right allocated to a
 1336 unit or member which has been suspended by the association shall
 1337 be subtracted from ~~may not be counted towards~~ the total number
 1338 of voting interests in the association, which shall be reduced
 1339 by the number of suspended voting interests when calculating the
 1340 total percentage or number of all voting interests available to
 1341 take or approve any action, and the suspended voting interests
 1342 may not be considered for any purpose, including, but not
 1343 limited to, the percentage or number of voting interests
 1344 necessary to constitute a quorum, the percentage or number of
 1345 voting interests required to conduct an election, or the
 1346 percentage or number of voting interests required to approve an
 1347 action under this chapter or pursuant to the declaration,
 1348 articles of incorporation, or bylaws. The suspension ends upon
 1349 full payment of all obligations currently due or overdue the
 1350 association. The notice and hearing requirements under
 1351 subsection (3) do not apply to a suspension imposed under this
 1352 subsection.

1353 (7) The suspensions permitted by paragraph (3) (a) and
 1354 subsections (4) and (5) apply to a member and, when appropriate,
 1355 the member's tenants, guests, or invitees, even if the
 1356 delinquency or failure that resulted in the suspension arose
 1357 from less than all of the multiple units owned by the member.

1358 Section 12. Subsection (1) of section 718.501, Florida
 1359 Statutes, is amended to read:

1360 718.501 Authority, responsibility, and duties of Division
 1361 of Florida Condominiums, Timeshares, and Mobile Homes.—

1362 (1) The division may enforce and ensure compliance with ~~the~~
 1363 ~~provisions of~~ this chapter and rules relating to the

Page 47 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1364 development, construction, sale, lease, ownership, operation,
 1365 and management of residential condominium units. In performing
 1366 its duties, the division has complete jurisdiction to
 1367 investigate complaints and enforce compliance with respect to
 1368 associations that are still under the control of the developer,
 1369 the control of a bulk-unit purchaser or lender-unit purchaser,
 1370 or the control of a bulk assignee or bulk buyer pursuant to part
 1371 VII of this chapter and complaints against developers, bulk-unit
 1372 purchasers, lender-unit purchasers, bulk assignees, or bulk
 1373 buyers involving improper turnover or failure to turnover,
 1374 pursuant to s. 718.301. However, after turnover has occurred,
 1375 the division has jurisdiction to investigate only complaints
 1376 related ~~only~~ to financial issues, elections, and unit owner
 1377 access to association records pursuant to s. 718.111(12).

1378 (a)1. The division may make necessary public or private
 1379 investigations within or outside this state to determine whether
 1380 any person has violated this chapter or any rule or order
 1381 hereunder, to aid in the enforcement of this chapter, or to aid
 1382 in the adoption of rules or forms.

1383 2. The division may submit any official written report,
 1384 worksheet, or other related paper, or a duly certified copy
 1385 thereof, compiled, prepared, drafted, or otherwise made by and
 1386 duly authenticated by a financial examiner or analyst to be
 1387 admitted as competent evidence in any hearing in which the
 1388 financial examiner or analyst is available for cross-examination
 1389 and attests under oath that such documents were prepared as a
 1390 result of an examination or inspection conducted pursuant to
 1391 this chapter.

1392 (b) The division may require or permit any person to file a

Page 48 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1393 statement in writing, under oath or otherwise, as the division
1394 determines, as to the facts and circumstances concerning a
1395 matter to be investigated.

1396 (c) For the purpose of any investigation under this
1397 chapter, the division director or any officer or employee
1398 designated by the division director may administer oaths or
1399 affirmations, subpoena witnesses and compel their attendance,
1400 take evidence, and require the production of any matter that
1401 ~~which~~ is relevant to the investigation, including the existence,
1402 description, nature, custody, condition, and location of any
1403 books, documents, or other tangible things and the identity and
1404 location of persons having knowledge of relevant facts or any
1405 other matter reasonably calculated to lead to the discovery of
1406 material evidence. Upon the failure of by a person to obey a
1407 subpoena or to answer questions propounded by the investigating
1408 officer and upon reasonable notice to all affected persons, the
1409 division may apply to the circuit court for an order compelling
1410 compliance.

1411 (d) Notwithstanding any remedies available to unit owners
1412 and associations, if the division has reasonable cause to
1413 believe that a violation of ~~any provision of~~ this chapter or a
1414 related rule has occurred, the division may institute
1415 enforcement proceedings in its own name against any developer,
1416 bulk-unit purchaser, lender-unit purchaser, bulk assignee, bulk
1417 buyer, association, officer, or member of the board of
1418 administration, or his or her ~~its~~ assignees or agents, as
1419 follows:

1420 1. The division may permit a person whose conduct or
1421 actions may be under investigation to waive formal proceedings

Page 49 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1422 and enter into a consent proceeding under which ~~whereby~~ orders,
1423 rules, or letters of censure or warning, whether formal or
1424 informal, may be entered against the person.

1425 2. The division may issue an order requiring the developer,
1426 bulk-unit purchaser, lender-unit purchaser, bulk assignee, bulk
1427 buyer, association, developer-designated officer, or developer-
1428 designated member of the board of administration, or his or her
1429 ~~developer-designated~~ assignees or agents, the ~~bulk assignee-~~
1430 ~~designated assignees or agents, bulk buyer-designated assignees~~
1431 ~~or agents,~~ community association manager, or the ~~community~~
1432 ~~association~~ management firm to cease and desist from the
1433 unlawful practice and take such affirmative action as in the
1434 judgment of the division to carry out the purposes of this
1435 chapter. If the division finds that a developer, bulk-unit
1436 purchaser, lender-unit purchaser, bulk assignee, bulk buyer,
1437 association, officer, or member of the board of administration,
1438 or his or her ~~its~~ assignees or agents, is violating or is about
1439 to violate ~~any provision of~~ this chapter, any rule adopted or
1440 order issued by the division, or any written agreement entered
1441 into with the division, and the violation presents an immediate
1442 danger to the public requiring an immediate final order, it may
1443 issue an emergency cease and desist order reciting with
1444 particularity the facts underlying such findings. The emergency
1445 cease and desist order is effective for 90 days. If the division
1446 begins nonemergency cease and desist proceedings, the emergency
1447 cease and desist order remains effective until the conclusion of
1448 the proceedings under ss. 120.569 and 120.57.

1449 3. If a developer, bulk-unit purchaser, lender-unit
1450 purchaser, bulk assignee, or bulk buyer, ~~fails to pay any~~

Page 50 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1451 restitution determined by the division to be owed ~~and, plus~~ any
 1452 accrued interest charged at the highest rate permitted by law,
 1453 within 30 days after expiration of any appellate time period of
 1454 a final order requiring payment of restitution or the conclusion
 1455 of any appeal thereof, whichever is later, the division shall
 1456 ~~must~~ bring an action in circuit or county court on behalf of any
 1457 association, class of unit owners, lessees, or purchasers for
 1458 restitution, declaratory relief, injunctive relief, or any other
 1459 available remedy. The division may also temporarily revoke its
 1460 acceptance of the filing for the developer, bulk-unit purchaser,
 1461 or lender-unit purchaser, to which the restitution relates until
 1462 payment of restitution is made.

1463 4. The division may petition the court for appointment of a
 1464 receiver or conservator who, if appointed, ~~the receiver or~~
 1465 ~~conservator~~ may take action to implement the court order to
 1466 ensure the performance of the order and to remedy any breach
 1467 thereof. In addition to all other means provided by law for the
 1468 enforcement of an injunction or temporary restraining order, the
 1469 circuit court may impound or sequester the property of a party
 1470 defendant, including books, papers, documents, and related
 1471 records, and allow the examination and use of the property by
 1472 the division and a court-appointed receiver or conservator.

1473 5. The division may apply to the circuit court for an order
 1474 of restitution under which ~~whereby~~ the defendant in an action
 1475 brought pursuant to subparagraph 4. is ordered to make
 1476 restitution of those sums shown by the division to have been
 1477 obtained by the defendant in violation of this chapter. At the
 1478 option of the court, such restitution is payable to the
 1479 conservator or receiver appointed pursuant to subparagraph 4. or

Page 51 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1480 directly to the persons whose funds or assets were obtained in
 1481 violation of this chapter.

1482 6. The division may impose a civil penalty against a
 1483 developer, bulk-unit purchaser, lender-unit purchaser, bulk
 1484 assignee, ~~or~~ bulk buyer, or association, or its assignee or
 1485 agent, for a ~~any~~ violation of this chapter or a related rule.
 1486 The division may impose a civil penalty individually against an
 1487 officer or board member who willfully and knowingly violates ~~a~~
 1488 ~~provision of~~ this chapter, an adopted rule, or a final order of
 1489 the division; may order the removal of such individual as an
 1490 officer or from the board of administration or as an officer of
 1491 the association; and may prohibit such individual from serving
 1492 as an officer or on the board of a community association for a
 1493 period of time. The term "willfully and knowingly" means that
 1494 the division informed the officer or board member that his or
 1495 her action or intended action violates this chapter, a rule
 1496 adopted under this chapter, or a final order of the division and
 1497 that the officer or board member refused to comply with ~~the~~
 1498 ~~requirements of~~ this chapter, a rule adopted under this chapter,
 1499 or a final order of the division. ~~The division,~~ Before
 1500 initiating formal agency action under chapter 120, the division
 1501 must afford the officer or board member an opportunity to
 1502 voluntarily comply, and an officer or board member who complies
 1503 within 10 days is not subject to a civil penalty. A penalty may
 1504 be imposed on the basis of each day of continuing violation, but
 1505 the penalty for any offense may not exceed \$5,000. ~~By January 1,~~
 1506 ~~1998,~~ The division shall adopt, by rule, penalty guidelines
 1507 applicable to possible violations or to categories of violations
 1508 of this chapter or rules adopted by the division. The guidelines

Page 52 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1509 must specify a meaningful range of civil penalties for each such
 1510 violation of the statute and rules and must be based upon the
 1511 harm caused by the violation, the repetition of the violation,
 1512 and upon such other factors deemed relevant by the division. ~~For~~
 1513 ~~example,~~ The division may consider whether the violations were
 1514 committed by a developer, bulk-unit purchaser, lender-unit
 1515 purchaser, bulk assignee, or bulk buyer, or owner-controlled
 1516 association, the size of the association, and other factors. The
 1517 guidelines must designate the possible mitigating or aggravating
 1518 circumstances that justify a departure from the range of
 1519 penalties provided by the rules. It is the legislative intent
 1520 that minor violations be distinguished from those that ~~which~~
 1521 endanger the health, safety, or welfare of ~~the~~ condominium
 1522 residents or other persons and that such guidelines provide
 1523 reasonable and meaningful notice to the public of likely
 1524 penalties that may be imposed for proscribed conduct. This
 1525 subsection does not limit the ability of the division to
 1526 informally dispose of administrative actions or complaints by
 1527 stipulation, agreed settlement, or consent order. All amounts
 1528 collected shall be deposited with the Chief Financial Officer to
 1529 the credit of the Division of Florida Condominiums, Timeshares,
 1530 and Mobile Homes Trust Fund. If a developer, bulk-unit
 1531 purchaser, lender-unit purchaser, bulk assignee, or bulk buyer
 1532 fails to pay the civil penalty and the amount deemed to be owed
 1533 to the association, the division shall issue an order directing
 1534 that such developer, bulk-unit purchaser, lender-unit purchaser,
 1535 bulk assignee, or bulk buyer cease and desist from further
 1536 operation until such time as the civil penalty is paid or may
 1537 pursue enforcement of the penalty in a court of competent

Page 53 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1538 jurisdiction. If an association fails to pay the civil penalty,
 1539 the division shall pursue enforcement in a court of competent
 1540 jurisdiction, and the order imposing the civil penalty or the
 1541 cease and desist order is not effective until 20 days after the
 1542 date of such order. Any action commenced by the division shall
 1543 be brought in the county in which the division has its executive
 1544 offices or in the county where the violation occurred.

1545 7. If a unit owner presents the division with proof that
 1546 the unit owner has requested access to official records in
 1547 writing by certified mail, and that after 10 days the unit owner
 1548 again made the same request for access to official records in
 1549 writing by certified mail, and that more than 10 days has
 1550 elapsed since the second request and the association has still
 1551 failed or refused to provide access to official records as
 1552 required by this chapter, the division shall issue a subpoena
 1553 requiring production of the requested records where the records
 1554 are kept pursuant to s. 718.112.

1555 8. In addition to subparagraph 6., the division may seek
 1556 the imposition of a civil penalty through the circuit court for
 1557 any violation for which the division may issue a notice to show
 1558 cause under paragraph (r). The civil penalty shall be at least
 1559 \$500 but no more than \$5,000 for each violation. The court may
 1560 also award to the prevailing party court costs and reasonable
 1561 attorney ~~attorney's~~ fees and, if the division prevails, may also
 1562 award reasonable costs of investigation.

1563 (e) The division may prepare and disseminate a prospectus
 1564 and other information to assist prospective owners, purchasers,
 1565 lessees, and developers of residential condominiums in assessing
 1566 the rights, privileges, and duties pertaining thereto.

Page 54 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1567 (f) The division may adopt rules to administer and enforce
1568 ~~the provisions of this chapter.~~

1569 (g) The division shall establish procedures for providing
1570 notice to an association and the developer, bulk-unit purchaser,
1571 lender-unit purchaser, bulk assignee, or bulk buyer during the
1572 period in which the developer, bulk-unit purchaser, lender-unit
1573 purchaser, bulk assignee, or bulk buyer controls the association
1574 if the division is considering the issuance of a declaratory
1575 statement with respect to the declaration of condominium or any
1576 related document governing such condominium community.

1577 (h) The division shall furnish each association that pays
1578 the fees required by paragraph (2) (a) a copy of this chapter, as
1579 amended, and the rules adopted thereto on an annual basis.

1580 (i) The division shall annually provide each association
1581 with a summary of declaratory statements and formal legal
1582 opinions relating to the operations of condominiums which were
1583 rendered by the division during the previous year.

1584 (j) The division shall provide training and educational
1585 programs for condominium association board members and unit
1586 owners. The training may, ~~at~~ in the division's discretion,
1587 include web-based electronic media, and live training and
1588 seminars in various locations throughout the state. The division
1589 may review and approve education and training programs for board
1590 members and unit owners offered by providers, ~~and~~ shall maintain
1591 a current list of approved programs and providers, and shall
1592 make such list available to board members and unit owners in a
1593 reasonable and cost-effective manner.

1594 (k) The division shall maintain a toll-free telephone
1595 number accessible to condominium unit owners.

Page 55 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1596 (l) The division shall develop a program to certify both
1597 volunteer and paid mediators to provide mediation of condominium
1598 disputes. Upon request, the division shall provide, ~~upon~~
1599 ~~request,~~ a list of such mediators to any association, unit
1600 owner, or other participant in arbitration proceedings under s.
1601 718.1255 requesting a copy of the list. The division shall
1602 include on the list of volunteer mediators only the names of
1603 individuals ~~persons~~ who have received at least 20 hours of
1604 training in mediation techniques or who have mediated at least
1605 20 disputes. In order to become initially certified by the
1606 division, paid mediators must be certified by the Supreme Court
1607 to mediate court cases in county or circuit courts. However, the
1608 division may adopt, by rule, additional factors for the
1609 certification of paid mediators, which must be related to
1610 experience, education, or background. In order to continue to be
1611 certified, an individual ~~Any person~~ initially certified as a
1612 paid mediator by the division must, ~~in order to continue to be~~
1613 ~~certified,~~ comply with the factors or requirements adopted by
1614 rule.

1615 (m) If a complaint is made, the division shall ~~must~~ conduct
1616 its inquiry with due regard for the interests of the affected
1617 parties. Within 30 days after receipt of a complaint, the
1618 division shall acknowledge the complaint in writing and notify
1619 the complainant as to whether the complaint is within the
1620 jurisdiction of the division and whether additional information
1621 is needed by the division from the complainant. The division
1622 shall conduct its investigation and, within 90 days after
1623 receipt of the original complaint or of timely requested
1624 additional information, take action upon the complaint. However,

Page 56 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1625 the failure to complete the investigation within 90 days does
 1626 not prevent the division from continuing the investigation,
 1627 accepting or considering evidence obtained or received after 90
 1628 days, or taking administrative action if reasonable cause exists
 1629 to believe that a violation of this chapter or a rule has
 1630 occurred. If an investigation is not completed within the time
 1631 limits established in this paragraph, the division shall, on a
 1632 monthly basis, notify the complainant in writing of the status
 1633 of the investigation. When reporting its action to the
 1634 complainant, the division shall inform the complainant of any
 1635 right to a hearing pursuant to ss. 120.569 and 120.57.

1636 (n) Condominium association directors, officers, and
 1637 employees; condominium developers; bulk-unit purchasers, lender-
 1638 unit purchasers, bulk assignees, bulk buyers, and community
 1639 association managers; and community association management firms
 1640 have an ongoing duty to reasonably cooperate with the division
 1641 in any investigation pursuant to this section. The division
 1642 shall refer to local law enforcement authorities any person who
 1643 ~~whom~~ the division believes has altered, destroyed, concealed, or
 1644 removed any record, document, or thing required to be kept or
 1645 maintained by this chapter with the purpose to impair its verity
 1646 or availability in the department's investigation.

1647 (o) The division may:

- 1648 1. Contract with agencies in this state or other
 1649 jurisdictions to perform investigative functions; or
 1650 2. Accept grants-in-aid from any source.

1651 (p) The division shall cooperate with similar agencies in
 1652 other jurisdictions to establish uniform filing procedures and
 1653 forms, public offering statements, advertising standards, and

Page 57 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1654 rules and common administrative practices.

1655 (q) The division shall consider notice to a developer,
 1656 bulk-unit purchaser, lender-unit purchaser, bulk assignee, or
 1657 bulk buyer to be complete when it is delivered to the address of
 1658 the developer, bulk-unit purchaser, lender-unit purchaser, bulk
 1659 assignee, or bulk buyer currently on file with the division.

1660 (r) In addition to its enforcement authority, the division
 1661 may issue a notice to show cause, which must provide for a
 1662 hearing, upon written request, in accordance with chapter 120.

1663 (s) The division shall submit to the Governor, the
 1664 President of the Senate, the Speaker of the House of
 1665 Representatives, and the chairs of the legislative
 1666 appropriations committees an annual report that includes, but
 1667 need not be limited to, the number of training programs provided
 1668 for condominium association board members and unit owners;~~;~~ the
 1669 number of complaints received, by type; the number and percent
 1670 of complaints acknowledged in writing within 30 days and the
 1671 number and percent of investigations acted upon within 90 days
 1672 in accordance with paragraph (m);~~;~~ and the number of
 1673 investigations exceeding the 90-day requirement. The annual
 1674 report must also include an evaluation of the division's core
 1675 business processes and make recommendations for improvements,
 1676 including statutory changes. The report shall be submitted by
 1677 September 30 following the end of the fiscal year.

1678 Section 13. Section 718.709, Florida Statutes, is created
 1679 to read:

1680 718.709 Applicability.—Sections 718.701-718.708, relating
 1681 to the Distressed Condominium Relief Act, apply to title to
 1682 units acquired on or after July 1, 2010, but before July 1,

Page 58 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1683 2016.

1684 Section 14. Part VIII of chapter 718, Florida Statutes,
1685 consisting of sections 718.801-718.813, is created to read:

1686 PART VIII

1687 BULK-UNIT PURCHASERS AND LENDER-UNIT PURCHASERS

1688 718.801 Legislative intent.—The Legislature declares that
1689 it is the public policy of this state to protect the interests
1690 of developers, lenders, unit owners, and condominium
1691 associations with regard to bulk-unit purchasers or lender-unit
1692 purchasers of condominium units and that there is a need to
1693 balance such interests by limiting the applicability of the
1694 Distressed Condominium Relief Act. Notwithstanding the
1695 limitation, the Distressed Condominium Relief Act applies to
1696 title acquired on or after July 1, 2010, but before July 1,
1697 2016.

1698 718.802 Definitions.—As used in this part, the term:

1699 (1) "Bulk assignee" means a person who is not a bulk buyer
1700 and who:

1701 (a) Acquires more than seven condominium parcels in a
1702 single condominium;

1703 (b) Receives an assignment of any of the developer rights,
1704 other than or in addition to those rights described in
1705 subsection (3), as set forth in the declaration of condominium
1706 or this chapter:

1707 1. By a written instrument recorded as part of or as an
1708 exhibit of the deed;

1709 2. By a separate instrument recorded in the public records
1710 of the county in which the condominium is located; or

1711 3. Pursuant to a final judgment or certificate of title

580-02525B-15

2015748c1

1712 issued in favor of a purchaser at a foreclosure sale; and

1713 (c) Acquired condominium parcels on or after July 1, 2010,
1714 but before July 1, 2016. The date of such acquisition shall be
1715 determined by the date of recording a deed or other instrument
1716 of conveyance for such parcels in the public records of the
1717 county in which the condominium is located, or by the date of
1718 issuing a certificate of title in a foreclosure proceeding with
1719 respect to such condominium parcels.

1720 A mortgagee or its assignee may not be deemed a bulk assignee or
1721 developer by reason of the acquisition of condominium units and
1722 receipt of an assignment of some or all of a developer's rights
1723 unless the mortgage or its assignee exercises any of the
1724 developer rights other than those described in subsection (3).

1725 (2) "Bulk-unit purchaser" means a person who acquires title
1726 to the greater of at least eight units or 20 percent of the
1727 units that ultimately will be operated by the same association,
1728 as provided in the declaration, articles of incorporation, or
1729 bylaws as originally recorded. Multiple bulk-unit purchasers may
1730 be members of an association simultaneously or successively.
1731 There may be one or more bulk-unit purchasers while the
1732 developer still owns units operated by the association. A person
1733 who acquires title to units or timeshare interests in a
1734 condominium, which units or timeshare interests are or
1735 ultimately will be included in a timeshare plan governed by
1736 chapter 721, may elect to be a bulk-unit purchaser pursuant to
1737 s. 718.813. The term does not include a lender-unit purchaser.
1738 Further, the term does not include an acquirer of units if any
1739 transfer of title to the acquirer is made:
1740

580-02525B-15

2015748c1

1741 (a) With intent to defraud or materially harm a purchaser,
 1742 a unit owner, or the association;

1743 (b) Where the acquirer is a person or limited liability
 1744 company that would be an insider, as defined in s. 726.102, of
 1745 the bulk-unit purchaser or of the developer; or

1746 (c) As a fraudulent transfer under chapter 726.

1747 (3) "Bulk buyer" means a person who acquired condominium
 1748 parcels on or after July 1, 2010, but before July 1, 2016, and
 1749 the date of acquisition shall be determined in the same manner
 1750 as in subsection (1). Further, the term means a person who
 1751 acquires more than seven condominium parcels in a single
 1752 condominium but who does not receive an assignment of any
 1753 developer rights or receives only some or all of the following
 1754 rights:

1755 (a) The right to conduct sales, leasing, and marketing
 1756 activities within the condominium.

1757 (b) The right to be exempt from the payment of working
 1758 capital contributions to the condominium association arising out
 1759 of, or in connection with, the bulk buyer's acquisition of the
 1760 units.

1761 (c) The right to be exempt from any rights of first refusal
 1762 which may be held by the condominium association and would
 1763 otherwise be applicable to subsequent transfers of title from
 1764 the bulk buyer to a third-party purchaser concerning one or more
 1765 units.

1766 (4) "Lender-unit purchaser" means a person, or the person's
 1767 successors, assigns, or wholly owned subsidiaries, who holds a
 1768 mortgage from a developer or from a bulk-unit purchaser on the
 1769 greater of at least eight units or 20 percent of the units that,

Page 61 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1770 as provided in the declaration, articles of incorporation, or
 1771 bylaws as originally recorded, ultimately will be operated by
 1772 the same association; who subsequently obtains title to such
 1773 units through foreclosure or deed in lieu of foreclosure; and
 1774 who makes the election to become a lender-unit purchaser
 1775 pursuant to 718.808(4). However, a mortgagee or its wholly owned
 1776 subsidiary that acquires and sells units to one or more bulk-
 1777 unit purchasers is not a developer or a lender-unit purchaser
 1778 with respect to the sale.

1779 718.803 Exercise of rights.-

1780 (1) A bulk-unit purchaser may exercise only the following
 1781 developer rights, provided such rights are contained in the
 1782 declaration:

1783 (a) The right to conduct sales, leasing, and marketing
 1784 activities within the condominium, including the use of the
 1785 sales and leasing office.

1786 (b) The right to assign limited common elements and use
 1787 rights to common elements and association property which were
 1788 not assigned before the bulk-unit purchaser acquired title to
 1789 the units. Such rights may include, without limitation, the
 1790 rights to garages, parking spaces, storage areas, and cabanas.
 1791 If there is more than one bulk-unit purchaser, this right must
 1792 be established in a written assignment from the developer which
 1793 specifies the bulk-unit purchaser who has such a right as to
 1794 specified limited common elements, common elements, and
 1795 association property.

1796 (c) For a phase condominium, the right to add phases.

1797 (2) If the initial purchaser of a unit from the developer
 1798 is required to make a working capital contribution to the

Page 62 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1799 association, a bulk-unit purchaser shall pay a working capital
 1800 contribution to the association, which must be calculated in the
 1801 same manner for each unit acquired, upon the earlier of:

1802 (a) Sale of a unit by the bulk-unit purchaser to a third
 1803 party other than the bulk-unit purchaser; or

1804 (b) Five years from the date of acquisition of title to a
 1805 unit by the bulk-unit purchaser.

1806 (3) If a bulk-unit purchaser exercises developer rights
 1807 other than those specified in subsection (1), he or she is no
 1808 longer deemed to be a bulk-unit purchaser, and this part does
 1809 not apply to such person.

1810 (4) Except as set forth in this part, a lender-unit
 1811 purchaser may exercise any developer rights that the lender-unit
 1812 purchaser acquires.

1813 718.804 Compliance.—A bulk-unit purchaser and a lender-unit
 1814 purchaser shall comply with all applicable requirements of s.
 1815 718.202 and part V of this chapter in connection with any units
 1816 that they own or sell.

1817 718.805 Voting rights.—

1818 (1) For the first 2 fiscal years following the first
 1819 conveyance of a unit to a bulk-unit purchaser or lender-unit
 1820 purchaser, the bulk-unit purchaser or lender-unit purchaser may
 1821 vote the voting interests allocated to his or her units to waive
 1822 reserves or reduce the funding of reserves. After these 2 fiscal
 1823 years, the bulk-unit purchaser or lender-unit purchaser may not
 1824 vote his or her voting interests to waive reserves or reduce the
 1825 funding of reserves until the bulk-unit purchaser or lender-unit
 1826 purchaser holds less than a majority of the voting interests in
 1827 the association.

Page 63 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1828 (2) A bulk-unit purchaser or lender-unit purchaser may not
 1829 transfer his or her right to vote to waive reserves or reduce
 1830 the funding of reserves to other bulk-unit purchasers or lender-
 1831 unit purchasers to extend the time period in subsection (1).

1832 718.806 Assessment liability; election of directors.—

1833 (1) BULK-UNIT PURCHASER ASSESSMENT LIABILITY.—A bulk-unit
 1834 purchaser is liable for all assessments on his or her units
 1835 which become due while the bulk-unit purchaser holds title to
 1836 such units. Additionally, the bulk-unit purchaser is jointly and
 1837 severally liable with the previous owner for all unpaid regular
 1838 periodic assessments and special assessments that became due
 1839 before the acquisition of title, for all other monetary
 1840 obligations accrued which are secured by the association's lien,
 1841 and for all costs advanced by the association for the
 1842 maintenance and repair of the units acquired by the bulk-unit
 1843 purchaser.

1844 (2) LENDER-UNIT PURCHASER ASSESSMENT LIABILITY.—The
 1845 liability of a lender-unit purchaser or his or her successors or
 1846 assignees for the units that the lender-unit purchaser owns is
 1847 limited to the lesser of:

1848 (a) The units' unpaid common expenses and the regular
 1849 periodic assessments that accrued or became due during the 12
 1850 months immediately preceding the lender-unit purchaser's
 1851 acquisition of title and for which payment in full has not been
 1852 received by the association; or

1853 (b) One percent of the original mortgage debt.

1854 The lender-unit purchaser acquiring title must comply with s.
 1855 718.116(1)(c).
 1856

Page 64 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1857 (3) DIRECTOR ELECTED BY BULK-UNIT PURCHASER.-A director who
 1858 has been elected or appointed by a bulk-unit purchaser is
 1859 automatically suspended from board service for 30 days following
 1860 the failure of the bulk-unit purchaser to timely pay monetary
 1861 obligations on a unit the bulk-unit purchaser owns. The
 1862 remaining directors may temporarily fill the vacancy created by
 1863 the suspension. Once the bulk-unit purchaser has cured all
 1864 outstanding delinquencies on the unit, the suspended director
 1865 shall replace the temporary appointee and resume service on the
 1866 board for the unexpired term.

1867 718.807 Amendments and material alterations.-

1868 (1) The following amendments or alterations may not go into
 1869 effect unless approved by a majority vote of unit owners other
 1870 than the developer, a bulk-unit purchaser, or a lender-unit
 1871 purchaser:

1872 (a) An amendment described in s. 718.110(4) or (8).

1873 (b) An amendment creating, changing, or terminating leasing
 1874 restrictions.

1875 (c) An amendment of the declaration pertaining to the
 1876 condominium's status as housing for older persons.

1877 (d) An amendment pursuant to s. 718.110(14) or an amendment
 1878 that otherwise reclassifies a portion of the common elements as
 1879 a limited common element or that authorizes the association to
 1880 change the limited common elements assigned to any unit.

1881 (e) Material alterations or substantial additions to the
 1882 common elements or association property any time one of the
 1883 following owns a percentage of voting interests equal to or
 1884 greater than the percentage required to approve the amendment:

1885 1. A bulk-unit purchaser;

Page 65 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1886 2. A lender-unit purchaser;

1887 3. The developer and a bulk-unit purchaser;

1888 4. The developer and a lender-unit purchaser; or

1889 5. A bulk-unit purchaser and a lender-unit purchaser.

1890 (2) Notwithstanding subsection (1), consent of the
 1891 developer, a bulk-unit purchaser, or a lender-unit purchaser is
 1892 required for an amendment that would otherwise require the
 1893 approval of such voting interests based upon the requirements of
 1894 the declaration, articles of incorporation, or bylaws or s.
 1895 718.110 or s. 718.113.

1896 718.808 Warranties and disclosures.-

1897 (1) As the seller, a bulk-unit purchaser or lender-unit
 1898 purchaser is deemed to have granted an implied warranty of
 1899 fitness and merchantability to a purchaser of each unit sold for
 1900 a period of 3 years, which begins on the date of the completion
 1901 of repairs or improvements that the bulk-unit purchaser or
 1902 lender-unit purchaser makes to the unit, common elements, or
 1903 limited common elements. The bulk-unit purchaser or lender-unit
 1904 purchaser is not deemed to have granted a warranty on
 1905 improvements, repairs, or alterations to the condominium which
 1906 he or she did not undertake.

1907 (2) The statute of limitations in s. 718.203 is tolled
 1908 while the bulk-unit purchaser begins the process of appointing
 1909 or electing a majority of the board of administration.

1910 (3) As the seller, the bulk-unit purchaser shall include
 1911 the following disclosure to purchasers in conspicuous type on
 1912 the first page of the sales contract:

1913 SELLER IS A BULK-UNIT PURCHASER UNDER THE CONDOMINIUM ACT.
 1914

Page 66 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1915 SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE
 1916 UNDER THE CONDOMINIUM ACT.

1917
 1918 (4) A mortgagee who acquires units may elect to become a
 1919 lender-unit purchaser by providing written notice of the
 1920 election to the association addressed to the registered agent at
 1921 the address specified in the records of the Department of State.
 1922 The notice shall be delivered within the time period ending upon
 1923 the earliest of:

1924 (a) The date on which the mortgagee exercises any developer
 1925 rights other than the developer rights described in s.
 1926 718.803(1) (a);

1927 (b) Before the sale of a unit by the mortgagee; or

1928 (c) One hundred eighty days after the recording of the
 1929 certificate of title or of the deed in lieu of foreclosure if
 1930 the mortgagee acquired the units by foreclosure or by deed in
 1931 lieu of foreclosure.

1932 (5) As the seller, the lender-unit purchaser shall include
 1933 the following disclosure to purchasers in conspicuous type on
 1934 the first page of the sales contract:

1935
 1936 SELLER IS A LENDER-UNIT PURCHASER UNDER THE CONDOMINIUM ACT.
 1937 SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE
 1938 UNDER THE CONDOMINIUM ACT. SELLER TOOK TITLE TO THE UNIT(S)
 1939 BEING SOLD TO PURCHASER BY FORECLOSURE OR DEED IN LIEU OF
 1940 FORECLOSURE.

1941
 1942 (6) (a) At or before the signing of a contract to sell a
 1943 unit, the bulk-unit purchaser and the lender-unit purchaser must

Page 67 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1944 provide a condition report that complies with s. 718.616(2) and
 1945 (3) and this section to the prospective purchaser and must
 1946 obtain verification of delivery of such condition report. A
 1947 condition report is not required in connection with a sale to a
 1948 bulk-unit purchaser or in connection with a deed in lieu of
 1949 foreclosure to a lender-unit purchaser. A mortgagee is not
 1950 required to deliver to a bulk-unit purchaser a condition report
 1951 even if the mortgagee acquires and transfers developer rights to
 1952 such bulk-unit purchaser.

1953 (b) The condition report must include a reasonably detailed
 1954 description of the repairs or replacements necessary to cure
 1955 defective construction identified in the condition report.

1956 (c) If, during the course of preparing the condition
 1957 report, the architect or engineer becomes aware of a component
 1958 that violates an applicable building code or federal or state
 1959 law or that deviates from the building plans approved by the
 1960 permitting authority, the architect or engineer shall disclose
 1961 such information in the condition report. The architect or
 1962 engineer shall make written inquiry to the applicable local
 1963 government authority of any building code violations and shall
 1964 include in the condition report any of the authority's responses
 1965 or its failure to respond.

1966 (d) The condition report shall be prepared before the bulk-
 1967 unit purchaser or the lender-unit purchaser enters into his or
 1968 her first sales contract, but the condition report may not be
 1969 prepared more than 6 months before the first sales contract is
 1970 agreed upon. If the bulk-unit purchaser or lender-unit purchaser
 1971 remains engaged in selling units, the condition report shall be
 1972 updated no later than 1 year after the closing of the first

Page 68 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

1973 sales contract and each year thereafter.

1974 (e) If a bulk-unit purchaser or lender-unit purchaser fails
 1975 to provide the condition report in accordance with this section,
 1976 the bulk-unit purchaser or lender-unit purchaser is deemed to
 1977 grant implied warranties of fitness and merchantability which
 1978 are not limited to the construction, improvements, or repairs
 1979 that he or she undertakes to the units, common elements, or
 1980 limited common elements.

1981 718.809 Joint and several liability.—For purposes of this
 1982 chapter, if there are multiple bulk-unit purchasers within the
 1983 same association, the units owned by the multiple bulk-unit
 1984 purchasers and the rights of the bulk-unit purchasers shall be
 1985 aggregated as if there were only one bulk-unit purchaser. Each
 1986 bulk-unit purchaser is jointly and severally liable with his or
 1987 her predecessor bulk-unit purchasers for compliance with this
 1988 chapter.

1989 718.810 Construction disputes.—A board of administration
 1990 composed of a majority of directors elected or appointed by a
 1991 bulk-unit purchaser may not resolve a construction dispute that
 1992 is subject to chapter 558 unless such resolution is approved by
 1993 a majority of the voting interests of the unit owners other than
 1994 the developer and a bulk-unit purchaser.

1995 718.811 Noncompliance.—A bulk-unit purchaser or a lender-
 1996 unit purchaser who fails to substantially comply with the
 1997 requirements of this chapter pertaining to the obligations and
 1998 rights of bulk-unit purchasers and lender-unit purchasers
 1999 forfeits all protections or exemptions provided under the
 2000 Condominium Act.

2001 718.812 Documents to be delivered upon turnover.—If a bulk-

Page 69 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2002 unit purchaser elects a majority of the board of administration
 2003 and the unit owners other than the bulk-unit purchaser elect a
 2004 majority, the bulk-unit purchaser must deliver all of the items
 2005 specified in s. 718.301(4) to the association. However, the
 2006 bulk-unit purchaser is not required to deliver items that were
 2007 never in the possession of the bulk-unit purchaser. In
 2008 conjunction with the acquisition of units, the bulk-unit
 2009 purchaser shall undertake a good faith effort to obtain the
 2010 items specified in s. 718.301(4) which must be delivered to the
 2011 association. If the bulk-unit purchaser cannot obtain such
 2012 items, the bulk-unit purchaser must deliver a certificate in
 2013 writing to the association which names or describes items that
 2014 were not obtainable by the bulk-unit purchaser and which
 2015 describes the good faith efforts that were undertaken to obtain
 2016 the items. Delivery of the certificate relieves the bulk-unit
 2017 purchaser of his or her responsibility under s. 718.301 to
 2018 deliver the documents and materials referenced in the
 2019 certificate. The responsibility of the bulk-unit purchaser to
 2020 conduct the audit required by s. 718.301(4)(c) begins on the
 2021 date the bulk-unit purchaser elects or appoints a majority of
 2022 the members of the board of administration and ends on the date
 2023 the bulk-unit purchaser no longer controls the board.

2024 718.813 Timeshare Condominiums.—With respect to the
 2025 acquisition of title to units or timeshare interests in a
 2026 condominium, which units or timeshare interests are or
 2027 ultimately will be included in a timeshare plan governed by
 2028 chapter 721:

2029 (1) Any person otherwise qualified to be a bulk-unit
 2030 purchaser pursuant to s. 718.802 is not a bulk-unit purchaser

Page 70 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2031 unless that person makes an election to become a bulk-unit
 2032 purchaser by providing notice to the association addressed to
 2033 the registered agent at the address specified in the records of
 2034 the Department of State. The notice shall be delivered within
 2035 the time period ending upon the earliest of:
 2036 (a) The date on which the person exercises any developer
 2037 rights other than the developer rights described in s.
 2038 718.803(1) (a);
 2039 (b) The sale of any unit or timeshare interest by the
 2040 person; or
 2041 (c) One hundred eighty days after the recording of the deed
 2042 or other instrument of conveyance by which the person acquired
 2043 the units or timeshare interests.
 2044 (2) If a person has made an election to be a bulk-unit
 2045 purchaser pursuant to subsection (1), the bulk-unit purchaser,
 2046 when selling units or timeshare interests, shall include the
 2047 following disclosure to purchasers in conspicuous type on the
 2048 first page of the contract for sale of units or timeshare
 2049 interests:
 2050 SELLER IS A BULK-UNIT PURCHASER UNDER THE CONDOMINIUM ACT.
 2051 SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE
 2052 UNDER THE CONDOMINIUM.
 2053 Section 15. Paragraph (a) of subsection (2) of section
 2054 719.104, Florida Statutes, is amended to read:
 2055 719.104 Cooperatives; access to units; records; financial
 2056 reports; assessments; purchase of leases.-
 2057 (2) OFFICIAL RECORDS.-
 2058 (a) From the inception of the association, the association
 2059 shall maintain a copy of each of the following, where

Page 71 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2060 applicable, which shall constitute the official records of the
 2061 association:
 2062 1. The plans, permits, warranties, and other items provided
 2063 by the developer pursuant to s. 719.301(4).
 2064 2. A photocopy of the cooperative documents.
 2065 3. A copy of the current rules of the association.
 2066 4. A book or books containing the minutes of all meetings
 2067 of the association, of the board of directors, and of the unit
 2068 owners, which minutes shall be retained for a period of not less
 2069 than 7 years.
 2070 5. A current roster of all unit owners and their mailing
 2071 addresses, unit identifications, voting certifications, and, if
 2072 known, telephone numbers. The association shall also maintain
 2073 the electronic mailing addresses and the numbers designated by
 2074 unit owners for receiving notice sent by electronic transmission
 2075 of those unit owners consenting to receive notice by electronic
 2076 transmission. The electronic mailing addresses and numbers
 2077 provided by unit owners to receive notice by electronic
 2078 transmission shall be removed from association records when
 2079 consent to receive notice by electronic transmission is revoked.
 2080 However, the association is not liable for an erroneous
 2081 disclosure of the electronic mail address or the number for
 2082 receiving electronic transmission of notices.
 2083 6. All current insurance policies of the association.
 2084 7. A current copy of any management agreement, lease, or
 2085 other contract to which the association is a party or under
 2086 which the association or the unit owners have an obligation or
 2087 responsibility.
 2088 8. Bills of sale or transfer for all property owned by the

Page 72 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2089 association.

2090 9. Accounting records for the association and separate
2091 accounting records for each unit it operates, according to good
2092 accounting practices. All accounting records shall be maintained
2093 for a period of not less than 7 years. The accounting records
2094 shall include, but not be limited to:

2095 a. Accurate, itemized, and detailed records of all receipts
2096 and expenditures.

2097 b. A current account and a monthly, bimonthly, or quarterly
2098 statement of the account for each unit designating the name of
2099 the unit owner, the due date and amount of each assessment, the
2100 amount paid upon the account, and the balance due.

2101 c. All audits, reviews, accounting statements, and
2102 financial reports of the association.

2103 d. All contracts for work to be performed. Bids for work to
2104 be performed shall also be considered official records and shall
2105 be maintained for a period of 1 year.

2106 10. Ballots, sign-in sheets, voting proxies, and all other
2107 papers relating to voting by unit owners, which shall be
2108 maintained for a period of 1 year after the date of the
2109 election, vote, or meeting to which the document relates.

2110 11. All rental records where the association is acting as
2111 agent for the rental of units.

2112 12. A copy of the current question and answer sheet as
2113 described in s. 719.504.

2114 13. All other written records of the association not
2115 specifically included in the foregoing which are related to the
2116 operation of the association.

2117 Section 16. Paragraphs (c) and (d) of subsection (1) of

Page 73 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2118 section 719.106, Florida Statutes, are amended to read:

2119 719.106 Bylaws; cooperative ownership.—

2120 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
2121 documents shall provide for the following, and if they do not,
2122 they shall be deemed to include the following:

2123 (c) *Board of administration meetings*.—Meetings of the board
2124 of administration at which a quorum of the members is present
2125 shall be open to all unit owners. Any unit owner may tape record
2126 or videotape meetings of the board of administration; however, a
2127 unit owner may not post the recordings on any website or other
2128 media that can readily be viewed by persons who are not members
2129 of the association. The right to attend such meetings includes
2130 the right to speak at such meetings with reference to all
2131 designated agenda items. The division shall adopt reasonable
2132 rules governing the tape recording and videotaping of the
2133 meeting. The association may adopt reasonable written rules
2134 governing the frequency, duration, and manner of unit owner
2135 statements. Adequate notice of all meetings shall be posted in a
2136 conspicuous place upon the cooperative property at least 48
2137 continuous hours preceding the meeting, except in an emergency.
2138 Any item not included on the notice may be taken up on an
2139 emergency basis by at least a majority plus one of the members
2140 of the board. Such emergency action shall be noticed and
2141 ratified at the next regular meeting of the board. However,
2142 written notice of any meeting at which nonemergency special
2143 assessments, or at which amendment to rules regarding unit use,
2144 will be considered shall be mailed, delivered, or electronically
2145 transmitted to the unit owners and posted conspicuously on the
2146 cooperative property not less than 14 days before the meeting.

Page 74 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2147 Evidence of compliance with this 14-day notice shall be made by
 2148 an affidavit executed by the person providing the notice and
 2149 filed among the official records of the association. Upon notice
 2150 to the unit owners, the board shall by duly adopted rule
 2151 designate a specific location on the cooperative property upon
 2152 which all notices of board meetings shall be posted. In lieu of
 2153 or in addition to the physical posting of notice of any meeting
 2154 of the board of administration on the cooperative property, the
 2155 association may, by reasonable rule, adopt a procedure for
 2156 conspicuously posting and repeatedly broadcasting the notice and
 2157 the agenda on a closed-circuit cable television system serving
 2158 the cooperative association. However, if broadcast notice is
 2159 used in lieu of a notice posted physically on the cooperative
 2160 property, the notice and agenda must be broadcast at least four
 2161 times every broadcast hour of each day that a posted notice is
 2162 otherwise required under this section. When broadcast notice is
 2163 provided, the notice and agenda must be broadcast in a manner
 2164 and for a sufficient continuous length of time so as to allow an
 2165 average reader to observe the notice and read and comprehend the
 2166 entire content of the notice and the agenda. Notice of any
 2167 meeting in which regular assessments against unit owners are to
 2168 be considered for any reason shall specifically contain a
 2169 statement that assessments will be considered and the nature of
 2170 any such assessments. Meetings of a committee to take final
 2171 action on behalf of the board or to make recommendations to the
 2172 board regarding the association budget are subject to the
 2173 provisions of this paragraph. Meetings of a committee that does
 2174 not take final action on behalf of the board or make
 2175 recommendations to the board regarding the association budget

Page 75 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2176 are subject to the provisions of this section, unless those
 2177 meetings are exempted from this section by the bylaws of the
 2178 association. Notwithstanding any other law to the contrary, the
 2179 requirement that board meetings and committee meetings be open
 2180 to the unit owners does not apply to board or committee meetings
 2181 held for the purpose of discussing personnel matters or meetings
 2182 between the board or a committee and the association's attorney,
 2183 with respect to proposed or pending litigation, if the meeting
 2184 is held for the purpose of seeking or rendering legal advice.
 2185 (d) *Shareholder meetings.*—There shall be an annual meeting
 2186 of the shareholders. All members of the board of administration
 2187 shall be elected at the annual meeting unless the bylaws provide
 2188 for staggered election terms or for their election at another
 2189 meeting. Any unit owner desiring to be a candidate for board
 2190 membership must comply with subparagraph 1. The bylaws must
 2191 provide the method for calling meetings, including annual
 2192 meetings. Written notice, which must incorporate an
 2193 identification of agenda items, shall be given to each unit
 2194 owner at least 14 days before the annual meeting and posted in a
 2195 conspicuous place on the cooperative property at least 14
 2196 continuous days preceding the annual meeting. Upon notice to the
 2197 unit owners, the board must by duly adopted rule designate a
 2198 specific location on the cooperative property upon which all
 2199 notice of unit owner meetings are posted. In lieu of or in
 2200 addition to the physical posting of the meeting notice, the
 2201 association may, by reasonable rule, adopt a procedure for
 2202 conspicuously posting and repeatedly broadcasting the notice and
 2203 the agenda on a closed-circuit cable television system serving
 2204 the cooperative association. However, if broadcast notice is

Page 76 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2205 used in lieu of a posted notice, the notice and agenda must be
 2206 broadcast at least four times every broadcast hour of each day
 2207 that a posted notice is otherwise required under this section.
 2208 If broadcast notice is provided, the notice and agenda must be
 2209 broadcast in a manner and for a sufficient continuous length of
 2210 time to allow an average reader to observe the notice and read
 2211 and comprehend the entire content of the notice and the agenda.
 2212 Unless a unit owner waives in writing the right to receive
 2213 notice of the annual meeting, the notice of the annual meeting
 2214 must be sent by mail, hand delivered, or electronically
 2215 transmitted to each unit owner. An officer of the association
 2216 must provide an affidavit or United States Postal Service
 2217 certificate of mailing, to be included in the official records
 2218 of the association, affirming that notices of the association
 2219 meeting were mailed, hand delivered, or electronically
 2220 transmitted, in accordance with this provision, to each unit
 2221 owner at the address last furnished to the association.

2222 1. The board of administration shall be elected by written
 2223 ballot or voting machine. A proxy may not be used in electing
 2224 the board of administration in general elections or elections to
 2225 fill vacancies caused by recall, resignation, or otherwise
 2226 unless otherwise provided in this chapter.

2227 a. At least 60 days before a scheduled election, the
 2228 association shall mail, deliver, or transmit, whether by
 2229 separate association mailing, delivery, or electronic
 2230 transmission or included in another association mailing,
 2231 delivery, or electronic transmission, including regularly
 2232 published newsletters, to each unit owner entitled to vote, a
 2233 first notice of the date of the election. Any unit owner or

Page 77 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2234 other eligible person desiring to be a candidate for the board
 2235 of administration must give written notice to the association at
 2236 least 40 days before a scheduled election. Together with the
 2237 written notice and agenda as set forth in this section, the
 2238 association shall mail, deliver, or electronically transmit a
 2239 second notice of election to all unit owners entitled to vote,
 2240 together with a ballot that lists all candidates. Upon request
 2241 of a candidate, the association shall include an information
 2242 sheet, no larger than 8 1/2 inches by 11 inches, which must be
 2243 furnished by the candidate at least 35 days before the election,
 2244 to be included with the mailing, delivery, or electronic
 2245 transmission of the ballot, with the costs of mailing, delivery,
 2246 or transmission and copying to be borne by the association. The
 2247 association is not liable for the contents of the information
 2248 sheets provided by the candidates. In order to reduce costs, the
 2249 association may print or duplicate the information sheets on
 2250 both sides of the paper. The division shall by rule establish
 2251 voting procedures consistent with this subparagraph, including
 2252 rules establishing procedures for giving notice by electronic
 2253 transmission and rules providing for the secrecy of ballots.
 2254 Elections shall be decided by a plurality of those ballots cast.
 2255 There is no quorum requirement. However, at least 20 percent of
 2256 the eligible voters must cast a ballot in order to have a valid
 2257 election. A unit owner may not permit any other person to vote
 2258 his or her ballot, and any such ballots improperly cast are
 2259 invalid. A unit owner who needs assistance in casting the ballot
 2260 for the reasons stated in s. 101.051 may obtain assistance in
 2261 casting the ballot. Any unit owner violating this provision may
 2262 be fined by the association in accordance with s. 719.303. The

Page 78 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2263 regular election must occur on the date of the annual meeting.
 2264 This subparagraph does not apply to timeshare cooperatives.
 2265 Notwithstanding this subparagraph, an election and balloting are
 2266 not required unless more candidates file a notice of intent to
 2267 run or are nominated than vacancies exist on the board. Any
 2268 challenge to the election process must be commenced within 60
 2269 days after the election results are announced.

2270 b. Within 90 days after being elected or appointed to the
 2271 board, each new director shall certify in writing to the
 2272 secretary of the association that he or she has read the
 2273 association's bylaws, articles of incorporation, proprietary
 2274 lease, and current written policies; that he or she will work to
 2275 uphold such documents and policies to the best of his or her
 2276 ability; and that he or she will faithfully discharge his or her
 2277 fiduciary responsibility to the association's members. Within 90
 2278 days after being elected or appointed to the board, in lieu of
 2279 this written certification, the newly elected or appointed
 2280 director may submit a certificate of having satisfactorily
 2281 completed the educational curriculum administered by an
 2282 education provider as approved by the division pursuant to the
 2283 requirements established in chapter 718 within 1 year before or
 2284 90 days after the date of election or appointment. The
 2285 educational certificate is valid and does not have to be
 2286 resubmitted as long as the director serves on the board without
 2287 interruption. A director who fails to timely file the written
 2288 certification or educational certificate is suspended from
 2289 service on the board until he or she complies with this sub-
 2290 subparagraph. The board may temporarily fill the vacancy during
 2291 the period of suspension. The secretary of the association shall

Page 79 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2292 cause the association to retain a director's written
 2293 certification or educational certificate for inspection by the
 2294 members for 5 years after a director's election or the duration
 2295 of the director's uninterrupted tenure, whichever is longer.
 2296 Failure to have such written certification or educational
 2297 certificate on file does not affect the validity of any board
 2298 action.

2299 2. Any approval by unit owners called for by this chapter,
 2300 or the applicable cooperative documents, must be made at a duly
 2301 noticed meeting of unit owners and is subject to this chapter or
 2302 the applicable cooperative documents relating to unit owner
 2303 decisionmaking, except that unit owners may take action by
 2304 written agreement, without meetings, on matters for which action
 2305 by written agreement without meetings is expressly allowed by
 2306 the applicable cooperative documents or law which provides for
 2307 the unit owner action.

2308 3. Unit owners may waive notice of specific meetings if
 2309 allowed by the applicable cooperative documents or law. If
 2310 authorized by the bylaws, notice of meetings of the board of
 2311 administration, shareholder meetings, except shareholder
 2312 meetings called to recall board members under paragraph (f), and
 2313 committee meetings may be given by electronic transmission to
 2314 unit owners who consent to receive notice by electronic
 2315 transmission.

2316 4. Unit owners have the right to participate in meetings of
 2317 unit owners with reference to all designated agenda items.
 2318 However, the association may adopt reasonable rules governing
 2319 the frequency, duration, and manner of unit owner participation.

2320 5. Any unit owner may tape record or videotape meetings of

Page 80 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2321 the unit owners subject to reasonable rules adopted by the
 2322 division; however, a unit owner may not post the recordings on
 2323 any website or other media that can readily be viewed by persons
 2324 who are not members of the association.

2325 6. Unless otherwise provided in the bylaws, a vacancy
 2326 occurring on the board before the expiration of a term may be
 2327 filled by the affirmative vote of the majority of the remaining
 2328 directors, even if the remaining directors constitute less than
 2329 a quorum, or by the sole remaining director. In the alternative,
 2330 a board may hold an election to fill the vacancy, in which case
 2331 the election procedures must conform to the requirements of
 2332 subparagraph 1. unless the association has opted out of the
 2333 statutory election process, in which case the bylaws of the
 2334 association control. Unless otherwise provided in the bylaws, a
 2335 board member appointed or elected under this subparagraph shall
 2336 fill the vacancy for the unexpired term of the seat being
 2337 filled. Filling vacancies created by recall is governed by
 2338 paragraph (f) and rules adopted by the division.

2339
 2340 Notwithstanding subparagraphs (b)2. and (d)1., an association
 2341 may, by the affirmative vote of a majority of the total voting
 2342 interests, provide for a different voting and election procedure
 2343 in its bylaws, which vote may be by a proxy specifically
 2344 delineating the different voting and election procedures. The
 2345 different voting and election procedures may provide for
 2346 elections to be conducted by limited or general proxy.

2347 Section 17. Subsections (3) and (4) of section 719.108,
 2348 Florida Statutes, are amended to read:

2349 719.108 Rents and assessments; liability; lien and

Page 81 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2350 priority; interest; collection; cooperative ownership.-

2351 (3) Rents and assessments, and installments on them, not
 2352 paid when due bear interest at the rate provided in the
 2353 cooperative documents from the date due until paid. This rate
 2354 may not exceed the rate allowed by law and, if a rate is not
 2355 provided in the cooperative documents, accrues at 18 percent per
 2356 annum. If the cooperative documents or bylaws so provide, the
 2357 association may charge an administrative late fee in addition to
 2358 such interest, not to exceed the greater of \$25 or 5 percent of
 2359 each installment of the assessment for each delinquent
 2360 installment that the payment is late. The association may also
 2361 recover from the unit owner any reasonable charges imposed upon
 2362 the association under a written contract with its management or
 2363 bookkeeping company or collection agent which are incurred in
 2364 connection with collecting a delinquent assessment. Such charges
 2365 must be in a liquidated and noncontingent amount and must be
 2366 based on the actual time expended performing necessary,
 2367 nonduplicative services. Fees for collection are not recoverable
 2368 for the period after referral of the matter to an association's
 2369 legal counsel. Any payment received by an association must be
 2370 applied first to any interest accrued by the association, then
 2371 to any administrative late fee, then to any costs and reasonable
 2372 attorney fees incurred in collection, then to any reasonable
 2373 costs for collection services contracted for by the association,
 2374 and then to the delinquent assessment. The foregoing applies
 2375 notwithstanding s. 673.3111, any purported accord and
 2376 satisfaction, or any restrictive endorsement, designation, or
 2377 instruction placed on or accompanying a payment. The preceding
 2378 sentence is intended to clarify existing law. A late fee is not

Page 82 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2379 subject to chapter 687 or s. 719.303(4).
 2380 (4) The association has a lien on each cooperative parcel
 2381 for any unpaid rents and assessments, plus interest, any
 2382 reasonable costs for collection services contracted for by the
 2383 association, and any ~~authorized~~ administrative late fees. If
 2384 authorized by the cooperative documents, the lien also secures
 2385 reasonable attorney fees incurred by the association incident to
 2386 the collection of the rents and assessments or enforcement of
 2387 such lien. The lien is effective from and after recording a
 2388 claim of lien in the public records in the county in which the
 2389 cooperative parcel is located which states the description of
 2390 the cooperative parcel, the name of the unit owner, the amount
 2391 due, and the due dates. Except as otherwise provided in this
 2392 chapter, a lien may not be filed by the association against a
 2393 cooperative parcel until 30 days after the date on which a
 2394 notice of intent to file a lien has been delivered to the owner.
 2395 (a) The notice must be sent to the unit owner at the
 2396 address of the unit by first-class United States mail, and the
 2397 notice must be in substantially the following form:
 2398 NOTICE OF INTENT
 2399 TO RECORD A CLAIM OF LIEN
 2400 RE: Unit ...(unit number)... of ...(name of cooperative)...
 2401 The following amounts are currently due on your account to
 2402 ...(name of association)..., and must be paid within 30 days
 2403 after your receipt of this letter. This letter shall serve as
 2404 the association's notice of intent to record a Claim of Lien
 2405 against your property no sooner than 30 days after your receipt
 2406 of this letter, unless you pay in full the amounts set forth
 2407 below:

Page 83 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2408 Maintenance due ...(dates)... \$.....
 2409 Late fee, if applicable \$.....
 2410 Interest through ...(dates)...* \$.....
 2411 Certified mail charges \$.....
 2412 Other costs \$.....
 2413 TOTAL OUTSTANDING \$.....
 2414 *Interest accrues at the rate of percent per annum.
 2415 1. If the most recent address of the unit owner on the
 2416 records of the association is the address of the unit, the
 2417 notice must be sent by certified mail, return receipt requested,
 2418 to the unit owner at the address of the unit.
 2419 2. If the most recent address of the unit owner on the
 2420 records of the association is in the United States, but is not
 2421 the address of the unit, the notice must be sent by certified
 2422 mail, return receipt requested, to the unit owner at his or her
 2423 most recent address.
 2424 3. If the most recent address of the unit owner on the
 2425 records of the association is not in the United States, the
 2426 notice must be sent by first-class United States mail to the
 2427 unit owner at his or her most recent address.
 2428 (b) A notice that is sent pursuant to this subsection is
 2429 deemed delivered upon mailing. A claim of lien must be executed
 2430 and acknowledged by an officer or authorized agent of the
 2431 association. The lien is not effective 1 year after the claim of
 2432 lien was recorded unless, within that time, an action to enforce
 2433 the lien is commenced. The 1-year period is automatically
 2434 extended for any length of time during which the association is
 2435 prevented from filing a foreclosure action by an automatic stay
 2436 resulting from a bankruptcy petition filed by the parcel owner

Page 84 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2437 or any other person claiming an interest in the parcel. The
 2438 claim of lien secures all unpaid rents and assessments that are
 2439 due and that may accrue after the claim of lien is recorded and
 2440 through the entry of a final judgment, as well as interest and
 2441 all reasonable costs and attorney fees incurred by the
 2442 association incident to the collection process. Upon payment in
 2443 full, the person making the payment is entitled to a
 2444 satisfaction of the lien.

2445 (c) By recording a notice in substantially the following
 2446 form, a unit owner or the unit owner's agent or attorney may
 2447 require the association to enforce a recorded claim of lien
 2448 against his or her cooperative parcel:

NOTICE OF CONTEST OF LIEN

2450 TO: ...(Name and address of association)...:
 2451 You are notified that the undersigned contests the claim of lien
 2452 filed by you on, ...(year)..., and recorded in Official
 2453 Records Book at Page, of the public records of
 2454 County, Florida, and that the time within which you may file
 2455 suit to enforce your lien is limited to 90 days from the date of
 2456 service of this notice. Executed this day of,
 2457 ...(year)....

2458 Signed: ...(Owner or Attorney)...

2459 After notice of contest of lien has been recorded, the clerk of
 2460 the circuit court shall mail a copy of the recorded notice to
 2461 the association by certified mail, return receipt requested, at
 2462 the address shown in the claim of lien or most recent amendment
 2463 to it and shall certify to the service on the face of the
 2464 notice. Service is complete upon mailing. After service, the
 2465 association has 90 days in which to file an action to enforce

Page 85 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2466 the lien. If the action is not filed within the 90-day period,
 2467 the lien is void. However, the 90-day period shall be extended
 2468 for any length of time during which the association is prevented
 2469 from filing its action because of an automatic stay resulting
 2470 from the filing of a bankruptcy petition by the unit owner or by
 2471 any other person claiming an interest in the parcel.

2472 (d) A release of lien must be in substantially the
 2473 following form:

RELEASE OF LIEN

2474 The undersigned lienor, in consideration of the final payment in
 2475 the amount of \$...., hereby waives and releases its lien and
 2476 right to claim a lien for unpaid assessments through,
 2477 ...(year)..., recorded in the Official Records Book at Page
 2478, of the public records of County, Florida, for the
 2479 following described real property:

2480 THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO. OF ...(NAME
 2481 OF COOPERATIVE)..., A COOPERATIVE AS SET FORTH IN THE
 2482 COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND
 2483 FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK,
 2484 PAGE, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.

2485 ...(Signature of Authorized Agent)... ...(Signature of
 2486 Witness)...

2487 ...(Print Name)... ...(Print Name)...

2488 ...(Signature of Witness)...

2489 ...(Print Name)...

2490 Sworn to (or affirmed) and subscribed before me this day of
 2491, ...(year)..., by ...(name of person making statement)...

2492 ...(Signature of Notary Public)...

2493 ...(Print, type, or stamp commissioned name of Notary Public)...

Page 86 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2495 Personally Known OR Produced as identification.
 2496 Section 18. Section 719.129, Florida Statutes, is created
 2497 to read:
 2498 719.129 Electronic voting.—The association may conduct
 2499 elections by electronic voting if a member consents, in writing,
 2500 to voting electronically and the following requirements are met:
 2501 (1) The association provides each member with:
 2502 (a) A method to authenticate the member's identity to the
 2503 electronic voting system.
 2504 (b) A method to secure the member's vote from, among other
 2505 things, malicious software and the ability of others to remotely
 2506 monitor or control the electronic voting platform.
 2507 (c) A method to communicate with the electronic voting
 2508 system.
 2509 (d) A method to review an electronic ballot before its
 2510 transmission to the electronic voting system.
 2511 (e) A method to transmit an electronic ballot to the
 2512 electronic voting system which ensures the secrecy and integrity
 2513 of each ballot.
 2514 (f) A method to allow members to verify the authenticity of
 2515 receipts sent from the electronic voting system.
 2516 (g) A method to confirm, at least 14 days before the voting
 2517 deadline, that the member's electronic voting platform can
 2518 successfully communicate with the electronic voting system.
 2519 (h) In the event of a disruption of the electronic voting
 2520 system, the ability to vote by mail or to deliver a ballot in
 2521 person.
 2522 (2) The association uses an electronic voting system that
 2523 is:

Page 87 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2524 (a) Accessible to members with disabilities.
 2525 (b) Secure from, among other things, malicious software and
 2526 the ability of others to remotely monitor or control the system.
 2527 (c) Able to authenticate the member's identity.
 2528 (d) Able to communicate with each member's electronic
 2529 voting platform.
 2530 (e) Able to authenticate the validity of each electronic
 2531 ballot to ensure that the ballot is not altered in transit.
 2532 (f) Able to transmit a receipt from the electronic voting
 2533 system to each member who casts an electronic ballot.
 2534 (g) Able to permanently separate any authentication or
 2535 identifying information from the electronic ballot, rendering it
 2536 impossible to tie a ballot to a specific member.
 2537 (h) Able to allow the member to confirm that his or her
 2538 ballot has been received and counted.
 2539 (i) Able to store and keep electronic ballots accessible to
 2540 election officials for recount, inspection, and review purposes.
 2541 (3) A member voting electronically pursuant to this section
 2542 shall be counted as being in attendance at the meeting for
 2543 purposes of determining a quorum.
 2544 (4) The bylaws of an association must provide for and allow
 2545 voting pursuant to this section before this section shall apply.
 2546 This section may apply to some or all matters for which a vote
 2547 of the membership is required.
 2548 Section 19. Subsection (3) of section 719.303, Florida
 2549 Statutes, is amended to read:
 2550 719.303 Obligations of owners.—
 2551 (3) The association may levy reasonable fines for failure
 2552 of the unit owner or the unit's occupant, licensee, or invitee

Page 88 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2553 to comply with any provision of the cooperative documents or
 2554 reasonable rules of the association. A fine may not become a
 2555 lien against a unit. A fine may be levied by the board of
 2556 administration or its authorized designee on the basis of each
 2557 day of a continuing violation, with a single notice and
 2558 opportunity for hearing before an impartial committee as
 2559 provided in paragraph (b). However, the fine may not exceed \$100
 2560 per violation, or \$1,000 in the aggregate.

2561 (a) An association may suspend, for a reasonable period of
 2562 time, the right of a unit owner, or a unit owner's tenant,
 2563 guest, or invitee, to use the common elements, common
 2564 facilities, or any other association property for failure to
 2565 comply with any provision of the cooperative documents or
 2566 reasonable rules of the association. This paragraph does not
 2567 apply to limited common elements intended to be used only by
 2568 that unit, common elements needed to access the unit, utility
 2569 services provided to the unit, parking spaces, or elevators.

2570 (b) A fine or suspension levied by the board of
 2571 administration or its authorized designee may not be imposed
 2572 unless the board first provides at least 14 days' written ~~except~~
 2573 after giving reasonable notice and an opportunity for a hearing
 2574 to the unit owner and, if applicable, its occupant, the unit's
 2575 licensee, or invitee. The hearing must be held before an
 2576 impartial a committee of other unit owners who are neither board
 2577 members, persons residing in a board member's household, nor the
 2578 authorized designee or members of the authorized designee's
 2579 household. The role of the impartial committee is limited to
 2580 determining whether to confirm or reject the fine or suspension
 2581 levied by the board or its authorized designee. If the impartial

Page 89 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2582 committee does not agree with the fine or suspension, it may not
 2583 be imposed.

2584 Section 20. Subsection (8) of section 720.301, Florida
 2585 Statutes, is amended to read:

2586 720.301 Definitions.—As used in this chapter, the term:

2587 (8) "Governing documents" means:

2588 (a) The recorded declaration of covenants for a community,
 2589 and all duly adopted and recorded amendments, supplements, and
 2590 recorded exhibits thereto; ~~and~~

2591 (b) The articles of incorporation and bylaws of the
 2592 homeowners' association, and any duly adopted amendments
 2593 thereto; and

2594 (c) Rules and regulations adopted under the authority of
 2595 the recorded declaration, articles of incorporation, or bylaws
 2596 and duly adopted amendments thereto.

2597 Section 21. Section 720.3015, Florida Statutes, is created
 2598 to read:

2599 720.3015 Short title.—This chapter may be cited as the
 2600 "Homeowners' Association Act."

2601 Section 22. Section 720.305, Florida Statutes, is amended
 2602 to read:

2603 720.305 Obligations of members; remedies at law or in
 2604 equity; levy of fines and suspension of use rights.—

2605 (1) Each member and the member's tenants, guests, and
 2606 invitees, and each association, are governed by, and must comply
 2607 with, this chapter, the governing documents of the community,
 2608 and the rules of the association. Actions at law or in equity,
 2609 or both, to redress alleged failure or refusal to comply with
 2610 these provisions may be brought by the association or by any

Page 90 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2611 member against:

2612 (a) The association;

2613 (b) A member;

2614 (c) Any director or officer of an association who willfully
2615 and knowingly fails to comply with these provisions; and

2616 (d) Any tenants, guests, or invitees occupying a parcel or
2617 using the common areas.

2618

2619 The prevailing party in any such litigation is entitled to
2620 recover reasonable ~~attorney~~ attorney's fees and costs. A member
2621 prevailing in an action between the association and the member
2622 under this section, in addition to recovering his or her
2623 reasonable ~~attorney~~ attorney's fees, may recover additional
2624 amounts as determined by the court to be necessary to reimburse
2625 the member for his or her share of assessments levied by the
2626 association to fund its expenses of the litigation. This relief
2627 does not exclude other remedies provided by law. This section
2628 does not deprive any person of any other available right or
2629 remedy.

2630 (2) The association may levy reasonable fines. A fine may
2631 not exceed of up to \$100 per violation against any member or any
2632 member's tenant, guest, or invitee for the failure of the owner
2633 of the parcel or its occupant, licensee, or invitee to comply
2634 with any provision of the declaration, the association bylaws,
2635 or reasonable rules of the association unless otherwise provided
2636 in the governing documents. A fine may be levied by the board or
2637 its authorized designee for each day of a continuing violation,
2638 with a single notice and opportunity for hearing, except that
2639 the fine may not exceed \$1,000 in the aggregate unless otherwise

Page 91 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2640 provided in the governing documents. A fine of less than \$1,000
2641 may not become a lien against a parcel. In any action to recover
2642 a fine, the prevailing party is entitled to reasonable attorney
2643 fees and costs from the nonprevailing party as determined by the
2644 court.

2645 (a) An association may suspend, for a reasonable period of
2646 time, the right of a member, or a member's tenant, guest, or
2647 invitee, to use common areas and facilities for the failure of
2648 the owner of the parcel or its occupant, licensee, or invitee to
2649 comply with any provision of the declaration, the association
2650 bylaws, or reasonable rules of the association. This paragraph
2651 does not apply to that portion of common areas used to provide
2652 access or utility services to the parcel. A suspension may not
2653 prohibit ~~impair the right of~~ an owner or tenant of a parcel from
2654 having to have vehicular and pedestrian ingress to and egress
2655 from the parcel, including, but not limited to, the right to
2656 park.

2657 (b) A fine or suspension may not be imposed by the board of
2658 administration or its authorized designee without at least 14
2659 days' notice to the person sought to be fined or suspended and
2660 an opportunity for a hearing before an impartial a committee of
2661 at least three members appointed by the board who are not
2662 officers, directors, or employees of the association, or the
2663 spouse, parent, child, brother, or sister of an officer,
2664 director, ~~or~~ employee, or the board's designee or the designee's
2665 family. If the committee, by majority vote, does not approve a
2666 proposed fine or suspension, it may not be imposed. The role of
2667 the impartial committee is limited to determining whether to
2668 confirm or reject the fine or suspension levied by the board or

Page 92 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2669 its authorized designee. If the board of administration or its
 2670 authorized designee association imposes a fine or suspension,
 2671 the association must provide written notice of such fine or
 2672 suspension by mail or hand delivery to the parcel owner and, if
 2673 applicable, to any tenant, licensee, or invitee of the parcel
 2674 owner.

2675 (3) If a member is more than 90 days delinquent in paying
 2676 any fee, fine, or other a monetary obligation due to the
 2677 association, the association may suspend the rights of the
 2678 member, or the member's tenant, guest, or invitee, to use common
 2679 areas and facilities until the fee, fine, or other monetary
 2680 obligation is paid in full. This subsection does not apply to
 2681 that portion of common areas used to provide access or utility
 2682 services to the parcel. A suspension may does not prohibit
 2683 impair the right of an owner or tenant of a parcel from having
 2684 to have vehicular and pedestrian ingress to and egress from the
 2685 parcel, including, but not limited to, the right to park. The
 2686 notice and hearing requirements under subsection (2) do not
 2687 apply to a suspension imposed under this subsection.

2688 (4) An association may suspend the voting rights of a
 2689 parcel or member for the nonpayment of any fee, fine, or other
 2690 monetary obligation due to the association which that is more
 2691 than 90 days delinquent. A voting interest or consent right
 2692 allocated to a parcel or member which has been suspended by the
 2693 association shall be subtracted from may not be counted towards
 2694 the total number of voting interests in the association, which
 2695 shall be reduced by the number of suspended voting interests
 2696 when calculating the total percentage or number of all voting
 2697 interests available to take or approve any action, and the

Page 93 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2698 suspended voting interests may not be considered for any
 2699 purpose, including, but not limited to, the percentage or number
 2700 of voting interests necessary to constitute a quorum, the
 2701 percentage or number of voting interests required to conduct an
 2702 election, or the percentage or number of voting interests
 2703 required to approve an action under this chapter or pursuant to
 2704 the governing documents. The notice and hearing requirements
 2705 under subsection (2) do not apply to a suspension imposed under
 2706 this subsection. The suspension ends upon full payment of all
 2707 obligations currently due or overdue to the association.

2708 (5) All suspensions imposed pursuant to subsection (3) or
 2709 subsection (4) must be approved at a properly noticed board
 2710 meeting. Upon approval, the association must notify the parcel
 2711 owner and, if applicable, the parcel's occupant, licensee, or
 2712 invitee by mail or hand delivery.

2713 (6) The suspensions permitted by paragraph (2) (a) and
 2714 subsections (3) and (4) apply to a member and, when appropriate,
 2715 the member's tenants, guests, or invitees, even if the
 2716 delinquency or failure that resulted in the suspension arose
 2717 from less than all of the multiple parcels owned by the member.

2718 Section 23. Paragraph (b) of subsection (1) and subsections
 2719 (9) and (10) of section 720.306, Florida Statutes, are amended
 2720 to read:

2721 720.306 Meetings of members; voting and election
 2722 procedures; amendments.—

2723 (1) QUORUM; AMENDMENTS.—

2724 (b) Unless otherwise provided in the governing documents or
 2725 required by law, and other than those matters set forth in
 2726 paragraph (c), any governing document of an association may be

Page 94 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2727 amended by the affirmative vote of two-thirds of the voting
 2728 interests of the association. Within 30 days after recording an
 2729 amendment to the governing documents, the association shall
 2730 provide copies of the amendment to the members. However, if a
 2731 copy of the proposed amendment is provided to the members before
 2732 they vote on the amendment ~~and the proposed amendment is not~~
 2733 ~~changed before the vote~~, the association, in lieu of providing a
 2734 copy of the amendment, may provide notice to the members that
 2735 the amendment was adopted, identifying the official book and
 2736 page number or instrument number of the recorded amendment and
 2737 that a copy of the amendment is available at no charge to the
 2738 member upon written request to the association. The copies and
 2739 notice described in this paragraph may be provided
 2740 electronically to those owners who previously consented to
 2741 receive notice electronically. The failure to timely provide
 2742 notice of the recording of the amendment does not affect the
 2743 validity or enforceability of the amendment.

2744 (9) ELECTIONS AND BOARD VACANCIES.—

2745 (a) Elections of directors must be conducted in accordance
 2746 with the procedures set forth in the governing documents of the
 2747 association. Except as provided in paragraph (b), all members of
 2748 the association are eligible to serve on the board of directors,
 2749 and a member may nominate himself or herself as a candidate for
 2750 the board at a meeting where the election is to be held;
 2751 provided, however, that if the election process allows
 2752 candidates to be nominated in advance of the meeting, the
 2753 association is not required to allow nominations at the meeting.
 2754 An election is not required unless more candidates are nominated
 2755 than vacancies exist. Except as otherwise provided in the

Page 95 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2756 governing documents, boards of directors must be elected by a
 2757 plurality of the votes cast by eligible voters. Any challenge to
 2758 the election process must be commenced within 60 days after the
 2759 election results are announced.

2760 (b) A person who is delinquent in the payment of any fee,
 2761 fine, or other monetary obligation to the association on the day
 2762 that he or she could last nominate himself or herself or be
 2763 nominated for the board may not seek election to the board, and
 2764 his or her name may not be listed on the ballot. A person
 2765 servng as a board member who becomes more than 90 days
 2766 delinquent in the payment of any fee, fine, or other monetary
 2767 obligation to the association shall be deemed to have abandoned
 2768 his or her seat on the board, creating a vacancy on the board to
 2769 be filled according to law. For purposes of this paragraph, the
 2770 term "any fee, fine, or other monetary obligation" means any
 2771 delinquency to the association with respect to any parcel ~~for~~
 2772 more than 90 days is not eligible for board membership. A person
 2773 who has been convicted of any felony in this state or in a
 2774 United States District or Territorial Court, or has been
 2775 convicted of any offense in another jurisdiction which would be
 2776 considered a felony if committed in this state, may not seek
 2777 election to the board and is not eligible for board membership
 2778 unless such felon's civil rights have been restored for at least
 2779 5 years as of the date on which such person seeks election to
 2780 the board. The validity of any action by the board is not
 2781 affected if it is later determined that a person was ineligible
 2782 to seek election to the board or that a member of the board is
 2783 ineligible for board membership.

2784 (c) Any election dispute between a member and an

Page 96 of 101

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02525B-15

2015748c1

2785 association must be submitted to mandatory binding arbitration
 2786 with the division. Such proceedings must be conducted in the
 2787 manner provided by s. 718.1255 and the procedural rules adopted
 2788 by the division. Unless otherwise provided in the bylaws, any
 2789 vacancy occurring on the board before the expiration of a term
 2790 may be filled by an affirmative vote of the majority of the
 2791 remaining directors, even if the remaining directors constitute
 2792 less than a quorum, or by the sole remaining director. In the
 2793 alternative, a board may hold an election to fill the vacancy,
 2794 in which case the election procedures must conform to the
 2795 requirements of the governing documents. Unless otherwise
 2796 provided in the bylaws, a board member appointed or elected
 2797 under this section is appointed for the unexpired term of the
 2798 seat being filled. Filling vacancies created by recall is
 2799 governed by s. 720.303(10) and rules adopted by the division.

2800 (10) RECORDING.—Any parcel owner may tape record or
 2801 videotape meetings of the board of directors and meetings of the
 2802 members; however, a parcel owner may not post the recordings on
 2803 any website or other media that can readily be viewed by persons
 2804 who are not members of the association. The board of directors
 2805 of the association may adopt reasonable rules governing the
 2806 taping of meetings of the board and the membership.

2807 Section 24. Paragraph (a) of subsection (1) and subsection
 2808 (3) of section 720.3085, Florida Statutes, are amended to read:

2809 720.3085 Payment for assessments; lien claims.—

2810 (1) When authorized by the governing documents, the
 2811 association has a lien on each parcel to secure the payment of
 2812 assessments and other amounts provided for by this section.
 2813 Except as otherwise set forth in this section, the lien is

580-02525B-15

2015748c1

2814 effective from and shall relate back to the date on which the
 2815 original declaration of the community was recorded. However, as
 2816 to first mortgages of record, the lien is effective from and
 2817 after recording of a claim of lien in the public records of the
 2818 county in which the parcel is located. This subsection does not
 2819 bestow upon any lien, mortgage, or certified judgment of record
 2820 on July 1, 2008, including the lien for unpaid assessments
 2821 created in this section, a priority that, by law, the lien,
 2822 mortgage, or judgment did not have before July 1, 2008.

2823 (a) To be valid, a claim of lien must state the description
 2824 of the parcel, the name of the record owner, the name and
 2825 address of the association, the assessment amount due, and the
 2826 due date. The claim of lien secures all unpaid assessments that
 2827 are due and that may accrue subsequent to the recording of the
 2828 claim of lien and before entry of a certificate of title, as
 2829 well as interest, late charges, and reasonable collection costs
 2830 and attorney fees incurred by the association incident to the
 2831 collection process. The person making payment is entitled to a
 2832 satisfaction of the lien upon payment in full.

2833 (3) Assessments and installments on assessments that are
 2834 not paid when due bear interest from the due date until paid at
 2835 the rate provided in the declaration of covenants or the bylaws
 2836 of the association, which rate may not exceed the rate allowed
 2837 by law. If no rate is provided in the declaration or bylaws,
 2838 interest accrues at the rate of 18 percent per year.

2839 (a) If the declaration or bylaws so provide, the
 2840 association may also charge an administrative late fee not to
 2841 exceed the greater of \$25 or 5 percent of the amount of each
 2842 installment that is paid past the due date. The association may

580-02525B-15

2015748c1

2843 also recover from the parcel owner any reasonable charges
 2844 imposed upon the association under a written contract with its
 2845 management or bookkeeping company or collection agent which are
 2846 incurred in connection with collecting a delinquent assessment.
 2847 Such charges must be in a liquidated and noncontingent amount
 2848 and must be based on the actual time expended performing
 2849 necessary, nonduplicative services. Fees for collection are not
 2850 recoverable for the period after referral of the matter to an
 2851 association's legal counsel.

2852 (b) Any payment received by an association and accepted
 2853 shall be applied first to any interest accrued, then to any
 2854 administrative late fee, then to any costs and reasonable
 2855 attorney fees incurred in collection, then to any reasonable
 2856 costs for collection services contracted for by the association,
 2857 and then to the delinquent assessment. This paragraph applies
 2858 notwithstanding any restrictive endorsement, designation, or
 2859 instruction placed on or accompanying a payment. A late fee is
 2860 not subject to the provisions of chapter 687 and is not a fine.

2861 Section 25. Section 720.317, Florida Statutes, is created
 2862 to read:

2863 720.317 Electronic voting.—The association may conduct
 2864 elections by electronic voting if a member consents, in writing,
 2865 to voting electronically and the following requirements are met:

2866 (1) The association provides each member with:

2867 (a) A method to authenticate the member's identity to the
 2868 electronic voting system.

2869 (b) A method to secure the member's vote from, among other
 2870 things, malicious software and the ability of others to remotely
 2871 monitor or control the electronic voting platform.

580-02525B-15

2015748c1

2872 (c) A method to communicate with the electronic voting
 2873 system.

2874 (d) A method to review an electronic ballot before its
 2875 transmission to the electronic voting system.

2876 (e) A method to transmit an electronic ballot to the
 2877 electronic voting system which ensures the secrecy and integrity
 2878 of each ballot.

2879 (f) A method to allow members to verify the authenticity of
 2880 receipts sent from the electronic voting system.

2881 (g) A method to confirm, at least 14 days before the voting
 2882 deadline, that the member's electronic voting platform can
 2883 successfully communicate with the electronic voting system.

2884 (h) In the event of a disruption of the electronic voting
 2885 system, the ability to vote by mail or to deliver a ballot in
 2886 person.

2887 (2) The association uses an electronic voting system that
 2888 is:

2889 (a) Accessible to members with disabilities.

2890 (b) Secure from, among other things, malicious software and
 2891 the ability of others to remotely monitor or control the system.

2892 (c) Able to authenticate the member's identity.

2893 (d) Able to communicate with each member's electronic
 2894 voting platform.

2895 (e) Able to authenticate the validity of each electronic
 2896 ballot to ensure that the ballot is not altered in transit.

2897 (f) Able to transmit a receipt from the electronic voting
 2898 system to each member who casts an electronic ballot.

2899 (g) Able to permanently separate any authentication or
 2900 identifying information from the electronic ballot, rendering it

580-02525B-15

2015748c1

2901 impossible to tie a ballot to a specific member.

2902 (h) Able to allow the member to confirm that his or her
2903 ballot has been received and counted.

2904 (i) Able to store and keep electronic ballots accessible to
2905 election officials for recount, inspection, and review purposes.

2906 (3) A member voting electronically pursuant to this section
2907 shall be counted as being in attendance at the meeting for
2908 purposes of determining a quorum.

2909 (4) The bylaws of an association must provide for and allow
2910 voting pursuant to this section before this section shall apply.
2911 This section may apply to some or all matters for which a vote
2912 of the membership is required.

2913 Section 26. This act shall take effect July 1, 2015.



The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 19, 2015

I respectfully request that **Senate Bill #748**, relating to Residential Properties, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Jeremy Ring".

Senator Jeremy Ring
Florida Senate, District 29