

**STORAGE NAME:** h3183.rpp

**DATE:** February 16, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
REAL PROPERTY & PROBATE  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 3183

**RELATING TO:** Condominiums

**SPONSOR(S):** Representative Geller

**COMPANION BILL(S):** None

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

(1) REAL PROPERTY & PROBATE

(2)

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(4)

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I. SUMMARY:

HB 3183 creates a 15-member Condominium Study Commission to conduct public hearings, and make recommendations by February 1, 1999, to the Governor, the President of the Senate, and the Speaker of the House.

The bill provides an appropriation from the Division of Florida Land Sales, Condominiums, and Mobile Homes trust fund in the amount of \$100,000.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

General provisions

Current law requires the operation of condominiums to be by associations and the associations must follow certain operational procedures in s. 718.111, F.S. Procedures address the responsibilities of the condominium association, the fiduciary duty of the corporation, the duty to maintain and provide official records, and the duty to deliver annual financial reports to unit owners.

Condominium associations are required to be incorporated as a for-profit or not-for-profit corporation. However, condominium associations formed prior to 1977 are not required to be incorporated. If they are not incorporated, these pre-1977 associations may not file articles of incorporation, and are not subject to the additional provisions in chapter 617, F.S. that govern corporations. However, condominium associations must include certain operational requirements in the bylaws, or if they do not, the bylaws will be deemed to include the provisions in s.718.112, F.S. In addition to the articles of incorporation, or in lieu of them if the condominium association is not incorporated, the bylaws must include requirements for operation of the association, board and unit owner meetings, financial reports and budgets, and other provisions that govern the board. s. 718.112, F.S.

Election procedures

Election of the board of directors as provided for in s. 718.112(2)(b), F.S., disallows proxy votes unless otherwise provided for in the chapter. The recommendation for this change was made by the Condominium Study Commission in 1990 (commission). See SECTION-BY -SECTION RESEARCH, Section 1. An exception to the general rule is permitted for associations who, by a majority vote of the association members, elect to allow a general or limited proxy. ss. 718.112(1)(d)7., F.S.

Division duties

Subsection 718.501(1), F.S., establishes the division's regulatory powers and duties. The division has the authority to make public or private investigations of alleged violations of law or administrative rules, in order to carry out the provisions of the chapter. Additionally, the division initiates enforcement proceedings pursuant to chapter 120, F.S.

Arbitration and mediation

Arbitration hearings for disputes between board members or the association and a unit owner of a condominium fall within the jurisdiction of the division. Section 718.1255, F.S., requires the division to arbitrate certain types of disputes between unit owners and associations. The division employs attorneys who act as arbitrators in these cases. During the 1997 Legislative Session, provisions passed that clarify what may not be considered a "dispute". It does not include a breach of fiduciary duty, a claim of failure to maintain common property, or removal of a tenant from a unit.

In Karr v. State of Florida, 96-00146402 (Fla. 17th Cir. Ct. filed Jan. 31, 1996), the plaintiffs argued that Florida law and department rules for mediation of condominium disputes were unconstitutional, violating access to courts. Subsequent to this case, dispute resolution provisions in chapter 718 were substantially revised. Currently,

volunteer and paid mediators are certified by the division to provide mediation of condominium disputes without charge to the parties, and have the authority to levy penalties up to \$5,000 for each violation. s. 718.501, F.S. The Legislature has determined that resolution of conflicts between unit owners and boards results in the need to "develop. . . a flexible means of alternative dispute resolution that directs disputes to the most efficient means of resolution." ss. 718.1255(3)(c), F.S. The language inserted in this section (97-301, Laws of Florida) provides directions, procedures, and requirements for the division in carrying out the provisions for mediation as a means of dispute resolution.

In addition to the aforementioned 1997 Legislative revisions to s. 718.1255, F.S., the revisions included an arbitration filing fee and procedures, binding arbitration, costs and attorneys fees, sanctions, cooperative arbitration, and mediation of disputes as an alternative to the arbitration process. See 97-301, Laws of Florida. These provisions took effect on October 1, 1997.

The Senate Committee on Judiciary conducted a study during the 1997-98 interim, titled Alternative Dispute Resolution for Condominiums and Cooperative Issues, in which they recommend "the Legislature should not make major changes in the condominium alternative dispute resolution statutes until the effect of the 1997 amendments are known."

#### Liens

If a unit owner fails to pay unit assessments, the association may file a lien, including unpaid assessments accruing under the previous ownership. Liability for assessments is joint and several with the previous owner. ss. 718.116(1)(a), F.S. The first mortgagee, must pay only unpaid assessments for six months prior to foreclosure, or "[o]ne percent of the original mortgage debt." ss. 718.116(b), F.S. These provisions apply to first mortgages recorded after, April 1, 1992. In addition, the first mortgagee who forecloses on a condominium is liable for common expenses during their ownership. Currently, HB 177, pending before the Legislature, would revise language regarding the liability of certain first mortgagees, and increase the existing 1 percent of original mortgage debt limitation, by amending s. 718.116, F.S.

#### Administrative Rules: Arbitration

Since October 1, 1979, ss. 718.501(1)(c), F.S., has authorized the department to impose penalties and fines upon developers, officers, and board members for violation of law, but the department's rules contained no penalty guidelines. In 1997, the Legislature required the department to adopt rules by January 1, 1998, to carry out the provisions that allow them to impose these penalties and fines. The department proposed rules and submitted them to the public for review through a series of public hearings throughout the state. As a result of input from public testimony the department is redrafting the proposed rules. According to the department, additional public hearings will be conducted for the public's review through a second series of public hearings.

**B. EFFECT OF PROPOSED CHANGES:**

This bill would create the Condominium Study Commission (commission) whose duty it is to consider relations between unit owners and the board of directors, election of board members, the rights and responsibilities of unit owners and the board, condominium liens, how to enforce liens, and the resulting foreclosure of the liens upon unit owners. In addition, the commission would consider the effectiveness of the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) responses to unit owners' complaints.

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

This bill may indirectly affect the authority and ability of the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) to make rules and adjudicate disputes depending upon the recommendations of the commission and actions taken as a result of their recommendations.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, creating a 15-member commission that would be located within the division for administrative support, imposes additional responsibilities, obligations, and work for the division.

(3) any entitlement to a government service or benefit?

This bill may indirectly affect the ability of an individual to access division services depending upon the recommendations of the commission and action taken as a result of their recommendations.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

None.

E. SECTION-BY-SECTION RESEARCHES:

**Section 1.**

Subsection 1. This bill creates a 15-member Condominium Study Commission. Five members will be appointed by the Speaker of the House with at least two members of the Legislature, five members will be appointed by the President of the Senate with at least two members of the Legislature, and five members will be appointed by the Governor who will not be members of the Legislature. The legislative intent in the method of creating this commission is to assure it represents a cross-section of individuals with an interest in condominiums. The Director of the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) will be an ex officio member of the commission, and for administrative purposes the commission will be located within the division.

In 1990, the Condominium Study Commission (commission) was created to make recommendations for the Legislature, the division, and community associations. This 10-member study commission recommended many revisions that became law in 1991 with passage of HB 1465. Some recommendations passed in 1991 and in current law include: prohibiting the use of proxies when voting for board members, alternative dispute resolution methods, mandatory arbitration, a Condominium Advisory Council, and generation of revenue. An additional suggestion made by the commission that was not acted upon was to further consider alternatives to the present method of foreclosure of first mortgages.

A Special Report on Issues Facing the Bureau of Condominiums, May 9, 1997, looks at issues previously reviewed by the 1990 commission; toll-free access to the department, resources to South Florida ( Ft. Lauderdale office), more aggressive enforcement, assistance to condominium associations with compliance to rules, enhancement of technological resources (use of Internet homepage), and decrease in the response time to complaints. In addition, the department outlines a plan to utilize resources more efficiently, revise current investigative procedures, step up enforcement of condominium violations, and educate staff on departmental changes.

Subsection 2. The bill directs the commission to conduct public hearings, and make recommendations regarding revisions to condominium laws. They will give consideration to relations between unit owners and the board of directors, election of board members, and the rights and responsibilities of unit owners and the board. Additionally, members will consider condominium liens, how to enforce them, and the resulting foreclosure on unit owners. The effectiveness of the division's responses to unit owners' complaints will be included. Members of the board will receive per diem and travel according to s. 112.061, F.S., for official commission duties.

Subsection 3. The bill requires a report to the Governor, Senate President, and Speaker of the House by February 1, 1999.

**Section 2.** The bill appropriates \$100,000 from the division Trust Fund to carry out the provisions of this section.

**Section 3.** The bill provides an effective date, June 30, 1999.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Although the bill specifies an appropriation of \$ 100,000, the Department of Business & Professional Regulation (BPR) reports the following fiscal impact on the resources available to the division from the division trust fund:

\$ 50,000	3 OPS employees (Senior Clerk, Administrative Assistant I, and Management Review Specialist for 8 months)
\$ 100,000	Travel expenses, per diem, report materials, printing, and other costs except labor.
<u>\$ 150,000</u>	Total allocation from the division trust fund

2. Recurring Effects:

There are no recurring expenses associated with this bill.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:**

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

**D. FISCAL COMMENTS:**

The bill provides for an appropriations of \$ 100,000, however, the department contends it will need \$ 150,000 to fund the commission.

**IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:**

**A. APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

According to the department, this bill may have an impact on the division's ability to carry out their duties and the directives given by the Legislature due to the reallocation of trust fund resources and labor required for the commission. In addition, the division is in the process of promulgating rules, and reorganizing staff in response to the revisions to chapter 718 made during the 1997 Legislative Session (97-301, Laws Of Florida) and their self-review.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

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