

STORAGE NAME: h1063.ca

DATE: April 5, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: CS/HB 1063

RELATING TO: Condominiums

SPONSOR(S): Committee on Real Property and Probate and Rep. Bronson

COMPANION BILL(S): SB 1168 (s), HB 1977 (c), CS/HB 190 (c)

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

- (1) REAL PROPERTY AND PROBATE YEAS 6 NAYS 0
 - (2) COMMUNITY AFFAIRS
 - (3) FINANCE & TAXATION
 - (4)
 - (5)
-

I. SUMMARY:

CS/HB 1063 requires a certificate or receipted bill to be filed with the clerk of the circuit court when a declaration of condominium is recorded showing that taxes on the property have been paid. The bill also authorizes the Regulatory Council of Community Association Managers to adopt rules related to continuing education providers.

The bill does not appear to have a significant fiscal impact on state or local government.

The effective date of the bill is July 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Condominiums--Property Tax Issue

A condominium is legally created by recording a declaration of condominium with the clerk of the circuit court of the county where the land is located. s. 718.104(2), F.S. (1997)¹. The declaration of condominium must be executed and acknowledged with the requirements for a deed. Id. All persons who have record title to an interest in the land proposed for condominium ownership must join in the execution of a declaration. Id. Upon execution, a declaration of condominium, including exhibits and amendments, is entitled to recordation as an agreement relating to the conveyance of land. s. 718.105(1), F.S. (1997).

Once a declaration of condominium is recorded, ad valorem taxes, benefit taxes, and special assessments by taxing authorities are assessed against the condominium units, not the condominium property as a whole. s. 718.120, F.S. (1997). Each condominium unit must be separately assessed for ad valorem taxes and special assessments as a single parcel. Id. "The taxes and special assessments levied against each condominium parcel shall constitute a lien only upon the condominium parcel assessed and upon no other portion of the condominium property." Id. Therefore, if a tax liability exists on the underlying property when a condominium is created, liability for the taxes shifts from the developer to the unit owners.

A document demonstrating payment of property taxes does not have to be filed when a declaration of condominium is recorded. Therefore, if a developer does not pay property taxes due prior to recording the declaration of condominium, responsibility for the tax liability shifts to the unit owners even if the unit owners did not have knowledge of the tax liability when the units were purchased.

Of note is a provision in chapter 498, F.S., requiring applicants for registration of subdivided lands to file a statement of the condition of the title, including encumbrances, to the subdivided lands. s. 498.027(5), F.S. (1997). Upon application for registration, the statement must be filed with the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation. Id. The statement may be a title opinion of a licensed attorney who is not a salaried employee, officer, or director of the applicant or owner, or other evidence of title acceptable to the Division. Id.

Regulatory Council of Community Association Managers--Rules Issue

A person cannot manage a community association² in Florida unless that person is licensed. s. 468.432, F.S. (1997). In order to renew a license, the licensee must comply with certain continuing education requirements as set by rule of the Regulatory Council of Community Association Managers ("Council"). s. 468.4336, F.S. (1997). The Council is specifically authorized to approve, by rule, the number of hours required, criteria, and course content. Id. The Council is not, however, specifically authorized to adopt rules related to the providers of continuing education.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 1063 requires a certificate or receipted bill to be filed with the clerk of the circuit court when a declaration of condominium is recorded showing that all property taxes have been paid. This requirement is not unlike the requirement in s. 498.027, F.S. (1997), requiring applicants for

¹ See also *Suntide Condominium Ass'n, Inc. v. Division of Florida Land Sales and Condominiums, Dept. of Business Regulation*, 463 So.2d 976 (Fla. 1st DCA 1981), review denied 417 So.2d 331.

² "Community association" means a "residential homeowners' association in which membership is a condition of ownership of a unit in a planned unit development, or of a lot for a home or a mobile home, or of a townhouse, villa, condominium, cooperative, or other residential unit which is a part of a residential development scheme and which is authorized to impose a fee which may become a lien on the parcel." s. 468.431(2), F.S. (1997).

registration of subdivided lands to file a statement of the condition of the title, including encumbrances, to the subdivided lands. s. 498.027(5), F.S. (1997).

The bill also provides specific statutory authority in chapter 468, F.S., for the Regulatory Council of Community Association Managers to adopt rules related to the providers of continuing education.

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?

Yes, specific statutory authority is provided in chapter 468, F.S., for the Regulatory Council of Community Association Managers to adopt rules related to the providers of continuing education courses.

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

Yes, the bill requires condominium developers to file a certificate or receipted bill when a declaration of condominium is recorded showing that property taxes have been paid.

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

No.

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

An agency or program is not 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?
No.
- c. Does the bill reduce total taxes, both rates and revenues?
No.
- d. Does the bill reduce total fees, both rates and revenues?
No.
- e. Does the bill authorize any fee or tax increase by any local government?
No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?
No.
- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?
No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?
No.
- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?
No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:
The bill does not purport 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?

No.

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:

The bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 718.105, F.S., is amended.

s. 468.4315, F.S., is amended.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Adds subsection 718.105(5), requiring a certificate or receipted bill to be filed with the clerk of the circuit court in the county where the property is located showing that all taxes due and owing on the property have been paid in full as of the date of recordation when a declaration of condominium is recorded.

Section 2: Amends subsection 468.4315(2), Florida Statutes, authorizing the Regulatory Council of Community Association Managers to adopt rules relating to continuing education providers.

[Note: Subsection 468.5315(2), Florida Statutes, currently authorizes the Regulatory Council of Community Association Managers to adopt rules relating to licensure examination, continuing education requirements, fees, and professional practice standards to assist the department in carrying out the duties and authorities conferred upon the department.]

Section 3: Provides that the act takes effect July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate at this time, however, property taxes should be paid prior to recording a declaration of condominium. Accordingly, local governments should collect property taxes from condominium developers in full, and should not be required to expend financial resources to collect outstanding taxes from individual owners of condominium units.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Prior to purchasing an individual unit of a condominium, potential buyers can verify with the clerk of the circuit court that property taxes on the land have been paid, thereby avoiding assumption of an outstanding tax liability without prior knowledge.³

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

None.

³ Currently, a buyer of a condominium unit is not required to purchase an owner's title insurance policy. Even if a buyer purchases an owner's policy, existence of a tax liability on the underlying property may not be discovered prior to the purchase of the condominium unit. A title search should reveal a tax liability; however, that depends on the thoroughness and accuracy of the title search on the underlying property.

D. FISCAL COMMENTS:

None.

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.

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:

A proponent of the bill asserts that Osceola County has experienced difficulty collecting property taxes on property that has been converted to condominium use. For example, a developer allegedly purchased land to build a condominium, developed the property, recorded documents to create the condominium, and sold individual units. During the refinancing of an individual unit, a title search of the underlying property disclosed that taxes were not paid on the land for seven years prior to creation of the condominium. The County had to seek payment of the unpaid taxes from individual unit owners, rather than the developer.⁴

On March 23, 1999, the Committee on Real Property and Probate met. At that time, it was brought to the attention of staff that this bill may be further clarified if the language of CS/HB 1063 tracks the language in s. 718.120(1), F.S. That section states that "ad valorem taxes, benefit taxes, and special assessments" are assessed against the condominium units and not upon the condominium property. Id. In other words, CS/HB 1063 could be amended to require a certificate or receipted bill to be filed with the clerk showing that "all ad valorem taxes, benefit taxes, and special assessments" due and owing on the property have been paid in full as of the date of recordation.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on Real Property and Probate: On March 23, 1999, the Committee on Real Property and Probate adopted one amendment to PCS/HB 1063. The amendment authorizes the Regulatory Council of Community Association Managers to adopt rules related to providers of continuing education. The Committee on Real Property and Probate unanimously passed PCS/HB 1063, as amended, and reported it out favorably as a committee substitute. The committee substitute and the original bill as filed differ as follows:

1. CS/HB 1063 clarifies that a certificate or receipted bill should be filed at the time a declaration of condominium is recorded, not each time a condominium unit changes ownership;
2. CS/HB 1063 eliminates an incorrect reference to Chapter 177, F.S.;
3. CS/HB 1063 allows a certificate or receipted bill to be filed with the clerk of the court, rather than just a certificate; and

⁴ Telephone conference with Jo Thacker, Osceola County Attorney (March 9, 1999).

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4. CS/HB 1063 authorizes the Regulatory Council of Community Association Managers to adopt rules related to providers of continuing education.

Committee on Community Affairs: The sponsor will offer a clarifying title amendment, clarifying that the act relates to condominiums and residential associations.

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY AND PROBATE:

Prepared by:

Staff Director:

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J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

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