

STORAGE NAME: h1063p1a.rpp

DATE: March 16, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY AND PROBATE
ANALYSIS**

BILL #: PCS/HB 1063

RELATING TO: Condominiums

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

COMPANION BILL(S): SB 1168 (i)

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

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

I. SUMMARY:

PCS/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 does not appear to have a significant impact on state or local government.

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

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

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.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.

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. 418.120, 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 constitute a lien only upon the condominium unit 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.

B. EFFECT OF PROPOSED CHANGES:

PCS/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 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).

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?

No.

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

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.

Yes, the bill requires private organizations and individuals 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. (1997), is amended.

E. SECTION-BY-SECTION ANALYSIS:

See "Effects of Proposed Changes."

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.²

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

None.

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.³

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

² 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, it depends on the thoroughness and accuracy of the title search on the underlying property.

³ Telephone conference with Jo Thacker, Osceola County Attorney (March 9, 1999).

STORAGE NAME: h1063p1a.rpp

DATE: March 16, 1999

PAGE 7

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY AND PROBATE:

Prepared by:

Staff Director:

Karen M. Camechis, J.D.

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