

By the Committees on Judiciary; Regulated Industries; and
Senator Geller

308-2106-02

1 A bill to be entitled
2 An act relating to condominiums and
3 cooperatives; amending s. 702.09, F.S.;
4 redefining the terms "mortgage" and
5 "foreclosure proceedings"; amending s. 718.104,
6 F.S.; revising provisions relating to
7 declarations for the creation of a condominium;
8 amending s. 718.106, F.S.; revising provisions
9 relating to appurtenances that pass with a
10 condominium unit; amending s. 718.110, F.S.;
11 revising provisions relating to amendments to a
12 declaration of condominium; amending s.
13 718.111, F.S.; revising provisions relating to
14 the association; amending s. 718.112, F.S.;
15 revising provisions relating to bylaws;
16 amending s. 718.113, F.S.; revising provisions
17 relating to material alterations of common
18 elements or association real property operated
19 by a multicondominium association; amending s.
20 718.115, F.S.; revising provisions relating to
21 common expenses; amending s. 718.1255, F.S.,
22 relating to alternative dispute resolution
23 procedures; providing for the expedited
24 handling of any allegation of an irregularity
25 in the election of any director of the board of
26 administration of a condominium; amending s.
27 718.405, F.S.; revising provisions relating to
28 multicondominiums and multicondominium
29 associations; amending s. 718.503, F.S.;
30 relating to disclosure requirements for the
31 sale of certain condominiums; removing the

1 requirement that question and answer sheets be
2 part of the closing documents; amending s.
3 718.504, F.S.; revising provisions relating to
4 the prospectus or offering circular; providing
5 an effective date.

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

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9 Section 1. Section 702.09, Florida Statutes, is
10 amended to read:

11 702.09 Definitions.--For the purposes of ss. 702.07
12 and 702.08 the words "decree of foreclosure" shall include a
13 judgment or order rendered or passed in the foreclosure
14 proceedings in which the decree of foreclosure shall be
15 rescinded, vacated, and set aside; the word "mortgage" shall
16 mean any written instrument securing the payment of money or
17 advances and includes liens to secure payment of assessments
18 arising under chapters 718 and 719; the word "debt" shall
19 include promissory notes, bonds, and all other written
20 obligations given for the payment of money; the words
21 "foreclosure proceedings" shall embrace every action in the
22 circuit or county courts of this state wherein it is sought to
23 foreclose a mortgage and sell the property covered by the
24 same; and the word "property" shall mean and include both real
25 and personal property.

26 Section 2. Paragraph (h) of subsection (4) and
27 subsection (5) of section 718.104, Florida Statutes, are
28 amended to read:

29 718.104 Creation of condominiums; contents of
30 declaration.--Every condominium created in this state shall be
31 created pursuant to this chapter.

1 (4) The declaration must contain or provide for the
2 following matters:

3 (h) If a developer reserves the right, in a
4 declaration recorded on or after July 1, 2000, to create a
5 multicondominium, the declaration must state, or provide a
6 specific formula for determining, the fractional or percentage
7 shares of liability for the common expenses of the association
8 and of ownership of the common surplus of the association to
9 be allocated to the units in each condominium to be operated
10 by the association. If a the declaration recorded on or after
11 July 1, 2000, for a condominium operated by a multicondominium
12 association as originally recorded fails to so provide, the
13 share of liability for the common expenses of the association
14 and of ownership of the common surplus of the association
15 allocated to each unit in each condominium operated by the
16 association shall be a fraction of the whole, the numerator of
17 which is the number "one" and the denominator of which is the
18 total number of units in all condominiums operated by the
19 association.

20 (5) The declaration as originally recorded or as
21 amended under the procedures provided therein may include
22 covenants and restrictions concerning the use, occupancy, and
23 transfer of the units permitted by law with reference to real
24 property. However, the rule against perpetuities shall not
25 defeat a right given any person or entity by the declaration
26 for the purpose of allowing unit owners to retain reasonable
27 control over the use, occupancy, and transfer of units.

28 Section 3. Paragraph (b) of subsection (2) of section
29 718.106, Florida Statutes, is amended to read:

30 718.106 Condominium parcels; appurtenances; possession
31 and enjoyment.--

1 (2) There shall pass with a unit, as appurtenances
2 thereto:

3 (b) The exclusive right to use such portion of the
4 common elements as may be provided by the declaration,
5 including the right to transfer such right to other units or
6 unit owners to the extent authorized by the declaration as
7 originally recorded, or amendments to the declaration adopted
8 pursuant to the provisions contained therein ~~under s.~~
9 718.110(2). Amendments to declarations of condominium
10 providing for the transfer of use rights with respect to
11 limited common elements are not amendments that materially
12 modify unit appurtenances as described in s. 718.110(4).
13 However, in order to be effective, the transfer of use rights
14 with respect to limited common elements must be effectuated in
15 conformity with the procedures set forth in the declaration as
16 originally recorded or as amended under the procedures
17 provided therein. This section is intended to clarify existing
18 law and applies to associations existing on the effective date
19 of this act.

20 Section 4. Subsection (4) of section 718.110, Florida
21 Statutes, is amended to read:

22 718.110 Amendment of declaration; correction of error
23 or omission in declaration by circuit court.--

24 (4) Unless otherwise provided in the declaration as
25 originally recorded, no amendment may change the configuration
26 or size of any unit in any material fashion, materially alter
27 or modify the appurtenances to the unit, or change the
28 proportion or percentage by which the unit owner shares the
29 common expenses of the condominium and owns the common surplus
30 of the condominium unless the record owner of the unit and all
31 record owners of liens on the unit join in the execution of

1 the amendment and unless all the record owners of all other
2 units in the same condominium approve the amendment. The
3 acquisition of property by the association, and material
4 alterations or substantial additions to such property or the
5 common elements by the association in accordance with s.
6 718.111(7) or s. 718.113, and amendments providing for the
7 transfer of use rights in limited common elements pursuant to
8 s. 718.106(2)(b) shall not be deemed to constitute a material
9 alteration or modification of the appurtenances to the units.
10 A declaration recorded after April 1, 1992, may not require
11 the approval of less than a majority of total voting interests
12 of the condominium for amendments under this subsection,
13 unless otherwise required by a governmental entity.

14 Section 5. Subsections (4) and (13) of section
15 718.111, Florida Statutes, are amended to read:

16 718.111 The association.--

17 (4) ASSESSMENTS; MANAGEMENT OF COMMON ELEMENTS.--The
18 association has the power to make and collect assessments and
19 to lease, maintain, repair, and replace the common elements or
20 association property; however, the association may not charge
21 a use fee against a unit owner for the use of common elements
22 or association property unless otherwise provided for in the
23 declaration of condominium or by a majority vote of the
24 association or unless the charges relate to expenses incurred
25 by an owner having exclusive use of the common elements or
26 association property.

27 (13) FINANCIAL REPORTING.--Within 90 days after the
28 end of the fiscal year, or annually on a date provided in the
29 bylaws, the association shall prepare and complete, or
30 contract for the preparation and completion of ~~or cause to be~~
31 ~~prepared and completed by a third party~~, a financial report

1 for the preceding fiscal year. Within 21 days after the final
2 financial report is completed by the association or received
3 ~~by the association~~ from the third party, but not later than
4 120 days after the end of the fiscal year or other date as
5 provided in the bylaws, the association shall mail to each
6 unit owner at the address last furnished to the association by
7 the unit owner, or hand deliver to each unit owner, a copy of
8 the financial report or a notice that a copy of the financial
9 report will be mailed or hand delivered to the unit owner,
10 without charge, upon receipt of a written request from the
11 unit owner. The division shall adopt rules setting forth
12 uniform accounting principles and standards to be used by all
13 associations and shall adopt rules addressing financial
14 reporting requirements for multicondominium associations. In
15 adopting such rules, the division shall consider the number of
16 members and annual revenues of an association. Financial
17 reports shall be prepared as follows:

18 (a) An association that meets the criteria of this
19 paragraph shall prepare or cause to be prepared a complete set
20 of financial statements in accordance with generally accepted
21 accounting principles. The financial statements shall be
22 based upon the association's total annual revenues, as
23 follows:

24 1. An association with total annual revenues of
25 \$100,000 or more, but less than \$200,000, shall prepare
26 compiled financial statements.

27 2. An association with total annual revenues of at
28 least \$200,000, but less than \$400,000, shall prepare reviewed
29 financial statements.

30 3. An association with total annual revenues of
31 \$400,000 or more shall prepare audited financial statements.

1 (b)1. An association with total annual revenues of
2 less than \$100,000 shall prepare a report of cash receipts and
3 expenditures.

4 2. An association which operates less than 50 units,
5 regardless of the association's annual revenues, shall prepare
6 a report of cash receipts and expenditures in lieu of
7 financial statements required by paragraph (a).

8 3. A report of cash receipts and disbursements must
9 disclose the amount of receipts by accounts and receipt
10 classifications and the amount of expenses by accounts and
11 expense classifications, including, but not limited to, the
12 following, as applicable: costs for security, professional and
13 management fees and expenses, taxes, costs for recreation
14 facilities, expenses for refuse collection and utility
15 services, expenses for lawn care, costs for building
16 maintenance and repair, insurance costs, administration and
17 salary expenses, and reserves accumulated and expended for
18 capital expenditures, deferred maintenance, and any other
19 category for which the association maintains reserves.

20 (c) An association may prepare or cause to be
21 prepared, without a meeting of or approval by the unit owners:

22 1. Compiled, reviewed, or audited financial
23 statements, if the association is required to prepare a report
24 of cash receipts and expenditures;

25 2. Reviewed or audited financial statements, if the
26 association is required to prepare compiled financial
27 statements; or

28 3. Audited financial statements if the association is
29 required to prepare reviewed financial statements.

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1 (d) If approved by a majority of the voting interests
2 present at a properly called meeting of the association, an
3 association may prepare or cause to be prepared:

4 1. A report of cash receipts and expenditures in lieu
5 of a compiled, reviewed, or audited financial statement;

6 2. A report of cash receipts and expenditures or a
7 compiled financial statement in lieu of a reviewed or audited
8 financial statement; or

9 3. A report of cash receipts and expenditures, a
10 compiled financial statement, or a reviewed financial
11 statement in lieu of an audited financial statement.

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13 Such meeting and approval must occur prior to the end of the
14 fiscal year and is effective only for the fiscal year in which
15 the vote is taken. With respect to an association to which the
16 developer has not turned over control of the association, all
17 unit owners, including the developer, may vote on issues
18 related to the preparation of financial reports for the first
19 2 fiscal years of the association's operation, beginning with
20 the fiscal year in which the declaration is recorded.

21 Thereafter, all unit owners except the developer may vote on
22 such issues until control is turned over to the association by
23 the developer.

24 Section 6. Subsection (3) of section 718.112, Florida
25 Statutes, is amended to read:

26 718.112 Bylaws.--

27 (3) OPTIONAL PROVISIONS.--The bylaws as originally
28 recorded or as amended under the procedures provided therein
29 may provide for the following:

1 (a) A method of adopting and amending administrative
2 rules and regulations governing the details of the operation
3 and use of the common elements.

4 (b) Restrictions on and requirements for the use,
5 maintenance, and appearance of the units and the use of the
6 common elements.

7 (c) Other provisions which are not inconsistent with
8 this chapter or with the declaration, as may be desired.

9 Section 7. Subsection (2) of section 718.113, Florida
10 Statutes, is amended to read:

11 718.113 Maintenance; limitation upon improvement;
12 display of flag; hurricane shutters.--

13 (2)(a) Except as otherwise provided in this section,
14 there shall be no material alteration or substantial additions
15 to the common elements or to real property which is
16 association property, except in a manner provided in the
17 declaration as originally recorded or as amended under the
18 procedures provided therein. If the declaration as originally
19 recorded or as amended under the procedures provided therein
20 does not specify the procedure for approval of material
21 alterations or substantial additions, 75 percent of the total
22 voting interests of the association must approve the
23 alterations or additions.

24 (b) There shall not be any material alteration of, or
25 substantial addition to, the common elements of any
26 condominium operated by a multicondominium association unless
27 approved in the manner provided in the declaration of the
28 affected condominium or condominiums as originally recorded or
29 as amended under the procedures provided therein. If a
30 declaration as originally recorded or as amended under the
31 procedures provided therein does not specify a procedure for

1 approving such an alteration or addition, the approval of 75
2 percent of the total voting interests of each affected
3 condominium is required. This subsection does not prohibit a
4 provision in any declaration, articles of incorporation, or
5 bylaws as originally recorded or as amended under the
6 procedures provided therein requiring the approval of unit
7 owners in any condominium operated by the same association or
8 requiring board approval before a material alteration or
9 substantial addition to the common elements is permitted. This
10 paragraph is intended to clarify existing law and applies to
11 associations existing on the effective date of this act.

12 (c) There shall not be any material alteration or
13 substantial addition made to association real property
14 operated by a multicondominium association, except as provided
15 in the declaration, articles of incorporation, or bylaws as
16 originally recorded or as amended under the procedures
17 provided therein. If the declaration, articles of
18 incorporation, or bylaws as originally recorded or as amended
19 under the procedures provided therein do not specify the
20 procedure for approving an alteration or addition to
21 association real property, the approval of 75 percent of the
22 total voting interests of the association is required. This
23 paragraph is intended to clarify existing law and applies to
24 associations existing on the effective date of this act.

25 Section 8. Paragraphs (b) and (c) of subsection (1) of
26 section 718.115, Florida Statutes, are amended to read:

27 718.115 Common expenses and common surplus.--

28 (1)

29 (b) The common expenses of a condominium within a
30 multicondominium are the common expenses directly attributable
31 to the operation of that condominium. The common expenses of a

1 multicondominium association do not include the common
2 expenses directly attributable to the operation of any
3 specific condominium or condominiums within the
4 multicondominium. This paragraph is intended to clarify
5 existing law and applies to associations existing on the
6 effective date of this act.

7 (c) The common expenses of a multicondominium
8 association may include categories of expenses related to the
9 property or common elements within a specific condominium in
10 the multicondominium if such property or common elements are
11 areas in which all members of the multicondominium association
12 have use rights or from which all members receive tangible
13 economic benefits. Such common expenses of the association
14 shall be identified in the declaration or bylaws as originally
15 recorded or as amended under the procedures provided therein
16 of each condominium within the multicondominium association.
17 This paragraph is intended to clarify existing law and applies
18 to associations existing on the effective date of this act.

19 Section 9. Subsection (5) is added to section
20 718.1255, Florida Statutes, to read:

21 718.1255 Alternative dispute resolution; voluntary
22 mediation; mandatory nonbinding arbitration; legislative
23 findings.--

24 (5) DISPUTES INVOLVING ELECTION IRREGULARITIES.--Every
25 arbitration petition received by the division and required to
26 be filed under this section challenging the legality of the
27 election of any director of the board of administration must
28 be handled on an expedited basis in the manner provided by the
29 division's rules for recall arbitration disputes.

30 Section 10. Subsections (1) and (4) of section
31 718.405, Florida Statutes, are amended to read:

1 718.405 Multicondominiums; multicondominium
2 associations.--

3 (1) An association may operate more than one
4 condominium. For multicondominiums created on or after July 1,
5 2000, ~~if~~ the declaration for each condominium to be operated
6 by that association must provide ~~provides~~ for participation in
7 a multicondominium, in conformity with this section, and
8 disclose ~~discloses~~ or describe ~~describes~~:

9 (a) The manner or formula by which the assets,
10 liabilities, common surplus, and common expenses of the
11 association will be apportioned among the units within the
12 condominiums operated by the association, in accordance with
13 s. 718.104(4)(g) or (h), as applicable.

14 (b) Whether unit owners in any other condominium, or
15 any other persons, will or may have the right to use
16 recreational areas or any other facilities or amenities that
17 are common elements of the condominium, and, if so, the
18 specific formula by which the other users will share the
19 common expenses related to those facilities or amenities.

20 (c) Recreational and other commonly used facilities or
21 amenities which the developer has committed to provide that
22 will be owned, leased by, or dedicated by a recorded plat to
23 the association but which are not included within any
24 condominium operated by the association. The developer may
25 reserve the right to add additional facilities or amenities if
26 the declaration and prospectus for each condominium to be
27 operated by the association contains the following statement
28 in conspicuous type and in substantially the following form:
29 RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT
30 CONSENT OF UNIT OWNERS OR THE ASSOCIATION.

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1 (d) The voting rights of the unit owners in the
2 election of directors and in other multicondominium
3 association affairs when a vote of the owners is taken,
4 including, but not limited to, a statement as to whether each
5 unit owner will have a right to personally cast his or her own
6 vote in all matters voted upon.

7 (4) This section does not prevent or restrict the
8 formation of a multicondominium by the merger or consolidation
9 of two or more condominium associations. Mergers or
10 consolidations of associations shall be accomplished in
11 accordance with this chapter, the declarations of the
12 condominiums being merged or consolidated, and chapter 617.
13 Section 718.110(4) does not apply to amendments to
14 declarations necessary to effect a merger or consolidation.
15 This section is intended to clarify existing law and applies
16 to associations existing on the effective date of this act.

17 Section 11. Subsection (2) of section 718.503, Florida
18 Statutes, is amended to read:

19 718.503 Developer disclosure prior to sale;
20 nondeveloper unit owner disclosure prior to sale;
21 voidability.--

22 (2) NONDEVELOPER DISCLOSURE.--

23 (a) Each unit owner who is not a developer as defined
24 by this chapter shall comply with the provisions of this
25 subsection prior to the sale of his or her unit. Each
26 prospective purchaser who has entered into a contract for the
27 purchase of a condominium unit is entitled, at the seller's
28 expense, to a current copy of the declaration of condominium,
29 articles of incorporation of the association, bylaws, and
30 rules of the association, ~~as well as a copy of the question~~

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1 ~~and answer sheet provided for by s. 718.504~~ and a copy of the
2 financial information required by s. 718.111.

3 (b) If a person licensed under part I of chapter 475
4 provides to or otherwise obtains for a prospective purchaser
5 the documents described in this subsection, the person is not
6 liable for any error or inaccuracy contained in the documents.

7 (c) Each contract entered into after July 1, 1992, for
8 the resale of a residential unit shall contain in conspicuous
9 type either:

10 1. A clause which states: THE BUYER HEREBY
11 ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF
12 THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF
13 THE ASSOCIATION, BYLAWS, RULES OF THE ASSOCIATION, AND A COPY
14 OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION ~~AND THE~~
15 ~~QUESTION AND ANSWER SHEET~~ MORE THAN 3 DAYS, EXCLUDING
16 SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF
17 THIS CONTRACT; or

18 2. A clause which states: THIS AGREEMENT IS VOIDABLE
19 BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION
20 TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND
21 LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT
22 BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE
23 DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS,
24 ~~AND~~ RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT
25 YEAR-END FINANCIAL INFORMATION ~~AND QUESTION AND ANSWER SHEET~~
26 IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE
27 VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE
28 TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS,
29 EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE
30 BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION,
31 BYLAWS, AND RULES, ~~AND QUESTION AND ANSWER SHEET~~ IF REQUESTED

1 IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL
2 TERMINATE AT CLOSING.

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4 A contract that does not conform to the requirements of this
5 paragraph is voidable at the option of the purchaser prior to
6 closing.

7 Section 12. Subsection (15) of section 718.504,
8 Florida Statutes, is amended to read:

9 718.504 Prospectus or offering circular.--Every
10 developer of a residential condominium which contains more
11 than 20 residential units, or which is part of a group of
12 residential condominiums which will be served by property to
13 be used in common by unit owners of more than 20 residential
14 units, shall prepare a prospectus or offering circular and
15 file it with the Division of Florida Land Sales, Condominiums,
16 and Mobile Homes prior to entering into an enforceable
17 contract of purchase and sale of any unit or lease of a unit
18 for more than 5 years and shall furnish a copy of the
19 prospectus or offering circular to each buyer. In addition to
20 the prospectus or offering circular, each buyer shall be
21 furnished a separate page entitled "Frequently Asked Questions
22 and Answers," which shall be in accordance with a format
23 approved by the division and a copy of the financial
24 information required by s. 718.111. This page shall, in
25 readable language, inform prospective purchasers regarding
26 their voting rights and unit use restrictions, including
27 restrictions on the leasing of a unit; shall indicate whether
28 and in what amount the unit owners or the association is
29 obligated to pay rent or land use fees for recreational or
30 other commonly used facilities; shall contain a statement
31 identifying that amount of assessment which, pursuant to the

1 budget, would be levied upon each unit type, exclusive of any
2 special assessments, and which shall further identify the
3 basis upon which assessments are levied, whether monthly,
4 quarterly, or otherwise; shall state and identify any court
5 cases in which the association is currently a party of record
6 in which the association may face liability in excess of
7 \$100,000; and which shall further state whether membership in
8 a recreational facilities association is mandatory, and if so,
9 shall identify the fees currently charged per unit type. The
10 division shall by rule require such other disclosure as in its
11 judgment will assist prospective purchasers. The prospectus or
12 offering circular may include more than one condominium,
13 although not all such units are being offered for sale as of
14 the date of the prospectus or offering circular. The
15 prospectus or offering circular must contain the following
16 information:

17 (15) If a the condominium created on or after July 1,
18 2000,is or may become part of a multicondominium, the
19 following information must be provided:

20 (a) A statement in conspicuous type in substantially
21 the following form: THIS CONDOMINIUM IS (MAY BE) PART OF A
22 MULTICONDOMINIUM DEVELOPMENT IN WHICH OTHER CONDOMINIUMS WILL
23 (MAY) BE OPERATED BY THE SAME ASSOCIATION. Immediately
24 following this statement, the location in the prospectus or
25 offering circular and its exhibits where the multicondominium
26 aspects of the offering are described must be stated.

27 (b) A summary of the provisions in the declaration,
28 articles of incorporation, and bylaws which establish and
29 provide for the operation of the multicondominium, including a
30 statement as to whether unit owners in the condominium will
31 have the right to use recreational or other facilities located

1 or planned to be located in other condominiums operated by the
2 same association, and the manner of sharing the common
3 expenses related to such facilities.

4 (c) A statement of the minimum and maximum number of
5 condominiums, and the minimum and maximum number of units in
6 each of those condominiums, which will or may be operated by
7 the association, and the latest date by which the exact number
8 will be finally determined.

9 (d) A statement as to whether any of the condominiums
10 in the multicondominium may include units intended to be used
11 for nonresidential purposes and the purpose or purposes
12 permitted for such use.

13 (e) A general description of the location and
14 approximate acreage of any land on which any additional
15 condominiums to be operated by the association may be located.

16 Section 13. This act shall take effect July 1, 2002.

17
18 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
19 COMMITTEE SUBSTITUTE FOR
20 CS for Senate Bill 694

21 Removes the reference to ch. 720, which governs homeowners'
22 associations, from the bill's changes to s. 702.09, F.S.,
23 which provides that the word "mortgage" includes liens to
secure payment of assessments arising under chapters 718
(condominiums) and 719 (cooperatives).

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