

By the Committee on Comprehensive Planning; and Senator Lynn

316-2240-03

1 A bill to be entitled
2 An act relating to homeowners' associations;
3 amending s. 702.09, F.S.; redefining the term
4 "mortgage" to include liens created pursuant to
5 a homeowners' association as defined in s.
6 712.01, F.S.; amending s. 718.111, F.S.;
7 revising provisions relating to insurance
8 required for condominium property; revising
9 provisions with respect to official records of
10 a condominium association; authorizing the
11 association to provide certain information to
12 prospective purchasers or lienholders under
13 certain circumstances; authorizing fees;
14 providing for applicability of amendments;
15 amending s. 718.112, F.S.; revising provisions
16 with respect to condominium bylaws to allow the
17 use of limited proxies for votes taken to waive
18 certain financial reporting requirements;
19 prohibiting the requirement of retrofitting for
20 enhanced fire protection systems under certain
21 circumstances; prohibiting residents of
22 high-rise buildings from voting to forego
23 retrofitting for enhanced fire protection
24 systems in common areas; requiring reports;
25 amending s. 718.303, F.S.; providing that
26 certain actions with respect to the obligation
27 of condominium owners shall not be deemed
28 actions for specific performance; amending s.
29 719.104, F.S.; revising provisions with respect
30 to official records of a cooperative
31 association; authorizing the association to

1 provide certain information to prospective
2 purchasers or lienholders under certain
3 circumstances; authorizing fees; amending s.
4 719.303, F.S.; providing that certain actions
5 with respect to the obligation of cooperative
6 owners shall not be deemed actions for specific
7 performance; amending s. 720.302, F.S.;
8 providing that corporations not for profit that
9 operate residential homeowners' associations
10 shall be governed by and subject to the
11 provisions of ch. 617, F.S.; amending s.
12 719.1055, F.S.; prohibiting the requirement of
13 retrofitting for enhanced fire protection
14 systems under certain circumstances;
15 prohibiting residents of high-rise buildings
16 from voting to forego retrofitting for enhanced
17 fire protection systems in common areas;
18 requiring reports; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 702.09, Florida Statutes, is
23 amended to read:

24 702.09 Definitions.--For the purposes of ss. 702.07
25 and 702.08 the words "decree of foreclosure" shall include a
26 judgment or order rendered or passed in the foreclosure
27 proceedings in which the decree of foreclosure shall be
28 rescinded, vacated, and set aside; the word "mortgage" shall
29 mean any written instrument securing the payment of money or
30 advances and includes liens to secure payment of assessments
31 arising under chapters 718 and 719 and liens created pursuant

1 to the recorded covenants of a homeowners' association as
2 defined in s. 712.01; the word "debt" shall include promissory
3 notes, bonds, and all other written obligations given for the
4 payment of money; the words "foreclosure proceedings" shall
5 embrace every action in the circuit or county courts of this
6 state wherein it is sought to foreclose a mortgage and sell
7 the property covered by the same; and the word "property"
8 shall mean and include both real and personal property.

9 Section 2. Subsections (11) and (12) of section
10 718.111, Florida Statutes, are amended to read:

11 718.111 The association.--

12 (11) INSURANCE.--In order to protect the safety,
13 health, and welfare of the people of the State of Florida and
14 to ensure consistency in the provision of insurance coverage
15 to condominiums and their unit owners, paragraphs (b) and (c)
16 are deemed to apply to every condominium in the state,
17 regardless of the date of its declaration of condominium.

18 (a) A unit-owner controlled association shall use its
19 best efforts to obtain and maintain adequate insurance to
20 protect the association, the association property, the common
21 elements, and the condominium property required to be insured
22 by the association pursuant to paragraph (b). If the
23 association is developer controlled, the association shall
24 exercise due diligence to obtain and maintain such insurance.
25 Failure to obtain and maintain adequate insurance during any
26 period of developer control shall constitute a breach of
27 fiduciary responsibility by the developer-appointed members of
28 the board of directors of the association, unless said members
29 can show that despite such failure, they have exercised due
30 diligence. The declaration of condominium as originally
31 recorded, or amended pursuant to procedures provided therein,

1 may require that condominium property consisting of
2 freestanding buildings where there is no more than one
3 building in or on such unit need not be insured by the
4 association if the declaration requires the unit owner to
5 obtain adequate insurance for the condominium property.An
6 association may also obtain and maintain liability insurance
7 for directors and officers, insurance for the benefit of
8 association employees, and flood insurance for common
9 elements, association property, and units. Adequate insurance,
10 regardless of any requirement in the declaration of
11 condominium for coverage by the association for "full
12 insurable value," "replacement cost," or the like, may include
13 reasonable deductibles as determined by the board.An
14 association or group of associations may self-insure against
15 claims against the association, the association property, and
16 the condominium property required to be insured by an
17 association, upon compliance with ss. 624.460-624.488. A copy
18 of each policy of insurance in effect shall be made available
19 for inspection by unit owners at reasonable times.

20 (b) Every hazard insurance policy ~~which is~~ issued or
21 renewed on or after January 1, 2004,to protect the a
22 condominium building shall provide primary coverage for:

23 1. All portions of the condominium property located
24 outside the units;

25 2. The condominium property located inside the units
26 as such property was initially installed, or replacements
27 thereof of like kind and quality and in accordance with the
28 original plans and specifications or, if the original plans
29 and specifications are not available, as they existed at the
30 time the unit was initially conveyed; and

31

1 3. All portions of the condominium property for which
2 the declaration of condominium requires coverage by the
3 association.

4
5 Anything to the contrary notwithstanding, the terms
6 "condominium property," "building," "improvements," "insurable
7 improvements," "common elements," "association property," or
8 any other term found in the declaration of condominium which
9 defines the scope of property or casualty insurance that a
10 condominium association must obtain shall exclude all floor,
11 wall, and ceiling coverings,~~that the word "building" wherever~~
12 ~~used in the policy include, but not necessarily be limited to,~~
13 ~~fixtures, installations, or additions comprising that part of~~
14 ~~the building within the unfinished interior surfaces of the~~
15 ~~perimeter walls, floors, and ceilings of the individual units~~
16 ~~initially installed, or replacements thereof of like kind or~~
17 ~~quality, in accordance with the original plans and~~
18 ~~specifications, or as they existed at the time the unit was~~
19 ~~initially conveyed if the original plans and specifications~~
20 ~~are not available. However, unless prior to October 1, 1986,~~
21 ~~the association is required by the declaration to provide~~
22 ~~coverage therefor, the word "building" does not include unit~~
23 ~~floor coverings, wall coverings, or ceiling coverings, and, as~~
24 ~~to contracts entered into after July 1, 1992, does not include~~
25 ~~the following equipment if it is located within a unit and the~~
26 ~~unit owner is required to repair or replace such equipment:~~
27 electrical fixtures, appliances, air conditioner or heating
28 equipment, water heaters, water filters, or built-in cabinets
29 and countertops, and window treatments, including curtains,
30 drapes, blinds, hardware, and similar window treatment
31 components, or replacements of any of the foregoing which are

1 located within the boundaries of a unit and serve only one
2 unit and all air conditioning compressors that service only an
3 individual unit, whether or not located within the unit
4 boundaries. The foregoing is intended to establish the
5 property or casualty insuring responsibilities of the
6 association and those of the individual unit owner and do not
7 serve to broaden or extend the perils of coverage afforded by
8 any insurance contract provided to the individual unit owner.
9 Beginning January 1, 2004, the association shall have the
10 authority to amend the declaration of condominium, without
11 regard to any requirement for mortgagee approval of amendments
12 affecting insurance requirements, to conform the declaration
13 of condominium to the coverage requirements of this section.
14 ~~With respect to the coverage provided for by this paragraph,~~
15 ~~the unit owners shall be considered additional insureds under~~
16 ~~the policy.~~

17 (c) Every hazard insurance policy issued or renewed on
18 or after January 1, 2004,to an individual unit owner shall
19 provide that the coverage afforded by such policy is excess
20 over the amount recoverable under any other policy covering
21 the same property. Each insurance policy issued to an
22 individual unit owner providing such coverage shall be without
23 rights of subrogation against the condominium association that
24 operates the condominium in which such unit owner's unit is
25 located. All real or personal property located within the
26 boundaries of the unit owner's unit which is excluded from the
27 coverage to be provided by the association as set forth in
28 paragraph (b) shall be insured by the individual unit owner.

29 (d) The association shall obtain and maintain adequate
30 insurance or fidelity bonding of all persons who control or
31 disburse funds of the association. The insurance policy or

1 fidelity bond must cover the maximum funds that will be in the
2 custody of the association or its management agent at any one
3 time. As used in this paragraph, the term "persons who control
4 or disburse funds of the association" includes, but is not
5 limited to, those individuals authorized to sign checks and
6 the president, secretary, and treasurer of the association.
7 The association shall bear the cost of bonding.

8 (12) OFFICIAL RECORDS.--

9 10. Bills of sale or transfer for all property owned
10 by the association.

11 11. Accounting records for the association and
12 separate accounting records for each condominium which the
13 association operates. All accounting records shall be
14 maintained for a period of not less than 7 years. The
15 accounting records shall include, but are not limited to:

16 a. Accurate, itemized, and detailed records of all
17 receipts and expenditures.

18 b. A current account and a monthly, bimonthly, or
19 quarterly statement of the account for each unit designating
20 the name of the unit owner, the due date and amount of each
21 assessment, the amount paid upon the account, and the balance
22 due.

23 c. All audits, reviews, accounting statements, and
24 financial reports of the association or condominium.

25 d. All contracts for work to be performed. Bids for
26 work to be performed shall also be considered official records
27 and shall be maintained for a period of 1 year.

28 12. Ballots, sign-in sheets, voting proxies, and all
29 other papers relating to voting by unit owners, which shall be
30 maintained for a period of 1 year from the date of the
31 election, vote, or meeting to which the document relates.

1 13. All rental records, when the association is acting
2 as agent for the rental of condominium units.

3 14. A copy of the current question and answer sheet as
4 described by s. 718.504.

5 15. All other records of the association not
6 specifically included in the foregoing which are related to
7 the operation of the association.

8 (b) The official records of the association shall be
9 maintained within the state. The records of the association
10 shall be made available to a unit owner within 5 working days
11 after receipt of written request by the board or its designee.
12 This paragraph may be complied with by having a copy of the
13 official records of the association available for inspection
14 or copying on the condominium property or association
15 property.

16 (c) The official records of the association are open
17 to inspection by any association member or the authorized
18 representative of such member at all reasonable times. The
19 right to inspect the records includes the right to make or
20 obtain copies, at the reasonable expense, if any, of the
21 association member. The association may adopt reasonable rules
22 regarding the frequency, time, location, notice, and manner of
23 record inspections and copying. The failure of an association
24 to provide the records within 10 working days after receipt of
25 a written request shall create a rebuttable presumption that
26 the association willfully failed to comply with this
27 paragraph. A unit owner who is denied access to official
28 records is entitled to the actual damages or minimum damages
29 for the association's willful failure to comply with this
30 paragraph. The minimum damages shall be \$50 per calendar day
31 up to 10 days, the calculation to begin on the 11th working

1 day after receipt of the written request. The failure to
2 permit inspection of the association records as provided
3 herein entitles any person prevailing in an enforcement action
4 to recover reasonable attorney's fees from the person in
5 control of the records who, directly or indirectly, knowingly
6 denied access to the records for inspection. The association
7 shall maintain an adequate number of copies of the
8 declaration, articles of incorporation, bylaws, and rules, and
9 all amendments to each of the foregoing, as well as the
10 question and answer sheet provided for in s. 718.504 and
11 year-end financial information required in this section on the
12 condominium property to ensure their availability to unit
13 owners and prospective purchasers, and may charge its actual
14 costs for preparing and furnishing these documents to those
15 requesting the same. Notwithstanding the provisions of this
16 paragraph, the following records shall not be accessible to
17 unit owners:

18 1. Any record protected by the lawyer-client privilege
19 as described in s. 90.502; and any record protected by the
20 work-product privilege, including any record prepared by an
21 association attorney or prepared at the attorney's express
22 direction; which reflects a mental impression, conclusion,
23 litigation strategy, or legal theory of the attorney or the
24 association, and which was prepared exclusively for civil or
25 criminal litigation or for adversarial administrative
26 proceedings, or which was prepared in anticipation of imminent
27 civil or criminal litigation or imminent adversarial
28 administrative proceedings until the conclusion of the
29 litigation or adversarial administrative proceedings.

30
31

1 2. Information obtained by an association in
2 connection with the approval of the lease, sale, or other
3 transfer of a unit.

4 3. Medical records of unit owners.

5 (d) The association shall prepare a question and
6 answer sheet as described in s. 718.504, and shall update it
7 annually.

8 (e) The association or its authorized agent shall not
9 be required to provide a prospective purchaser or lienholder
10 with information about the condominium or the association
11 other than information or documents required by this chapter
12 to be made available or disclosed. The association or its
13 authorized agent shall be entitled to charge a reasonable fee
14 to the prospective purchaser, lienholder, or the current unit
15 owner for its time in providing good faith responses to
16 requests for information by or on behalf of a prospective
17 purchaser or lienholder, other than that required by law,
18 provided that such fee shall not exceed \$150 plus the
19 reasonable cost of photocopying and any attorney's fees
20 incurred by the association in connection with the
21 association's response.

22 Section 3. Paragraphs (b) and (1) of subsection (2) of
23 section 718.112, Florida Statutes, are amended to read:

24 718.112 Bylaws.--

25 (2) REQUIRED PROVISIONS.--The bylaws shall provide for
26 the following and, if they do not do so, shall be deemed to
27 include the following:

28 (b) Quorum; voting requirements; proxies.--

29 1. Unless a lower number is provided in the bylaws,
30 the percentage of voting interests required to constitute a
31 quorum at a meeting of the members shall be a majority of the

1 voting interests. Unless otherwise provided in this chapter or
2 in the declaration, articles of incorporation, or bylaws, and
3 except as provided in subparagraph (d)3., decisions shall be
4 made by owners of a majority of the voting interests
5 represented at a meeting at which a quorum is present.

6 2. Except as specifically otherwise provided herein,
7 after January 1, 1992, unit owners may not vote by general
8 proxy, but may vote by limited proxies substantially
9 conforming to a limited proxy form adopted by the division.
10 Limited proxies and general proxies may be used to establish a
11 quorum. Limited proxies shall be used for votes taken to waive
12 or reduce reserves in accordance with subparagraph (f)2.; for
13 votes taken to waive the financial reporting requirements of
14 s. 718.111(13);for votes taken to amend the declaration
15 pursuant to s. 718.110; for votes taken to amend the articles
16 of incorporation or bylaws pursuant to this section; and for
17 any other matter for which this chapter requires or permits a
18 vote of the unit owners. Except as provided in paragraph (d),
19 after January 1, 1992, no proxy, limited or general, shall be
20 used in the election of board members. General proxies may be
21 used for other matters for which limited proxies are not
22 required, and may also be used in voting for nonsubstantive
23 changes to items for which a limited proxy is required and
24 given. Notwithstanding the provisions of this subparagraph,
25 unit owners may vote in person at unit owner meetings. Nothing
26 contained herein shall limit the use of general proxies or
27 require the use of limited proxies for any agenda item or
28 election at any meeting of a timeshare condominium
29 association.

30 3. Any proxy given shall be effective only for the
31 specific meeting for which originally given and any lawfully

1 adjourned meetings thereof. In no event shall any proxy be
2 valid for a period longer than 90 days after the date of the
3 first meeting for which it was given. Every proxy is revocable
4 at any time at the pleasure of the unit owner executing it.

5 4. A member of the board of administration or a
6 committee may submit in writing his or her agreement or
7 disagreement with any action taken at a meeting that the
8 member did not attend. This agreement or disagreement may not
9 be used as a vote for or against the action taken and may not
10 be used for the purposes of creating a quorum.

11 5. When any of the board or committee members meet by
12 telephone conference, those board or committee members
13 attending by telephone conference may be counted toward
14 obtaining a quorum and may vote by telephone. A telephone
15 speaker must be used so that the conversation of those board
16 or committee members attending by telephone may be heard by
17 the board or committee members attending in person as well as
18 by any unit owners present at a meeting.

19 (1) Certificate of compliance.--There shall be a
20 provision that a certificate of compliance from a licensed
21 electrical contractor or electrician may be accepted by the
22 association's board as evidence of compliance of the
23 condominium units with ~~to~~ the applicable fire and life safety
24 code. Notwithstanding the provisions of chapter 633 or of any
25 other statute, ordinance, administrative rule, or regulation,
26 or any interpretation of the foregoing, an association,
27 condominium, or unit owner is not obligated to retrofit the
28 common elements or units of a residential condominium with a
29 fire sprinkler system or other enhanced fire protection system
30 in a building that has been certified for occupancy by the
31 applicable governmental entity, if the unit owners have voted

1 to forego such retrofitting by the affirmative vote of
2 two-thirds of all voting interests. However, a high-rise
3 building owner may not forego the retrofitting of common
4 areas. For purposes of this subsection, the term "high-rise
5 building" means a building that is greater than 75 feet in
6 height where the building height is measured from the lowest
7 level of fire department access to the floor of the highest
8 occupiable story. For purposes of this subsection, the term
9 "common areas" means any hallway, corridor, lobby, stairwell,
10 or entryway.

11 (a) A vote to forego retrofitting may not be obtained
12 by general proxy or limited proxy, but shall be obtained by a
13 vote personally cast at a duly called membership meeting, or
14 by execution of a written consent by the member, and shall be
15 effective upon the recording of a certificate attesting to
16 such vote in the public records of the county where the
17 condominium is located. Such vote shall be held biannually, or
18 by majority vote of the board of directors of the condominium
19 association, at the next annual meeting. The association shall
20 provide each unit owner written notice of the vote to forego
21 retrofitting of the required fire sprinkler system, in at
22 least 16-point bold type, by certified mail, within 20 days
23 after the association's vote. After such notice is provided to
24 each owner, a copy of such notice shall be provided by the
25 current owner to a new owner prior to closing and to a renter
26 prior to signing a lease.

27 (b) As part of the information collected annually from
28 condominiums, the division shall require condominium
29 associations to report the membership vote and recording of a
30 certificate under this subsection and, if retrofitting has
31 been undertaken, the per-unit cost of such work. The division

1 shall annually report to the Division of State Fire Marshal of
2 the Department of Financial Services the number of
3 condominiums that have elected to forego retrofitting.

4 Section 4. Subsection (1) of section 718.303, Florida
5 Statutes, is amended to read:

6 718.303 Obligations of owners; waiver; levy of fine
7 against unit by association.--

8 (1) Each unit owner, each tenant and other invitee,
9 and each association shall be governed by, and shall comply
10 with the provisions of, this chapter, the declaration, the
11 documents creating the association, and the association bylaws
12 and the provisions thereof shall be deemed expressly
13 incorporated into any lease of a unit. Actions for damages or
14 for injunctive relief, or both, for failure to comply with
15 these provisions may be brought by the association or by a
16 unit owner against:

17 (a) The association.

18 (b) A unit owner.

19 (c) Directors designated by the developer, for actions
20 taken by them prior to the time control of the association is
21 assumed by unit owners other than the developer.

22 (d) Any director who willfully and knowingly fails to
23 comply with these provisions.

24 (e) Any tenant leasing a unit, and any other invitee
25 occupying a unit.

26

27 The prevailing party in any such action or in any action in
28 which the purchaser claims a right of voidability based upon
29 contractual provisions as required in s. 718.503(1)(a) is
30 entitled to recover reasonable attorney's fees. A unit owner
31 prevailing in an action between the association and the unit

1 owner under this section, in addition to recovering his or her
2 reasonable attorney's fees, may recover additional amounts as
3 determined by the court to be necessary to reimburse the unit
4 owner for his or her share of assessments levied by the
5 association to fund its expenses of the litigation. This
6 relief does not exclude other remedies provided by law.
7 Actions arising under this subsection shall not be deemed to
8 be actions for specific performance.

9 Section 5. Subsection (2) of section 719.104, Florida
10 Statutes, is amended to read:

11 719.104 Cooperatives; access to units; records;
12 financial reports; assessments; purchase of leases.--

13 (2) OFFICIAL RECORDS.--

14 (a) From the inception of the association, the
15 association shall maintain a copy of each of the following,
16 where applicable, which shall constitute the official records
17 of the association:

18 1. The plans, permits, warranties, and other items
19 provided by the developer pursuant to s. 719.301(4).

20 2. A photocopy of the cooperative documents.

21 3. A copy of the current rules of the association.

22 4. A book or books containing the minutes of all
23 meetings of the association, of the board of directors, and of
24 the unit owners, which minutes shall be retained for a period
25 of not less than 7 years.

26 5. A current roster of all unit owners and their
27 mailing addresses, unit identifications, voting
28 certifications, and, if known, telephone numbers.

29 6. All current insurance policies of the association.

30 7. A current copy of any management agreement, lease,
31 or other contract to which the association is a party or under

1 | which the association or the unit owners have an obligation or
2 | responsibility.

3 | 8. Bills of sale or transfer for all property owned by
4 | the association.

5 | 9. Accounting records for the association and separate
6 | accounting records for each unit it operates, according to
7 | good accounting practices. All accounting records shall be
8 | maintained for a period of not less than 7 years. The
9 | accounting records shall include, but not be limited to:

10 | a. Accurate, itemized, and detailed records of all
11 | receipts and expenditures.

12 | b. A current account and a monthly, bimonthly, or
13 | quarterly statement of the account for each unit designating
14 | the name of the unit owner, the due date and amount of each
15 | assessment, the amount paid upon the account, and the balance
16 | due.

17 | c. All audits, reviews, accounting statements, and
18 | financial reports of the association.

19 | d. All contracts for work to be performed. Bids for
20 | work to be performed shall also be considered official records
21 | and shall be maintained for a period of 1 year.

22 | 10. Ballots, sign-in sheets, voting proxies, and all
23 | other papers relating to voting by unit owners, which shall be
24 | maintained for a period of 1 year after the date of the
25 | election, vote, or meeting to which the document relates.

26 | 11. All rental records where the association is acting
27 | as agent for the rental of units.

28 | 12. A copy of the current question and answer sheet as
29 | described in s. 719.504.

30 |
31 |

1 13. All other records of the association not
2 specifically included in the foregoing which are related to
3 the operation of the association.

4 (b) The official records of the association shall be
5 maintained within the state. The records of the association
6 shall be made available to a unit owner within 5 working days
7 after receipt of written request by the board or its designee.
8 This paragraph may be complied with by having a copy of the
9 official records available for inspection or copying on the
10 cooperative property.

11 (c) The official records of the association shall be
12 open to inspection by any association member or the authorized
13 representative of such member at all reasonable times. Failure
14 to permit inspection of the association records as provided
15 herein entitles any person prevailing in an enforcement action
16 to recover reasonable attorney's fees from the person in
17 control of the records who, directly or indirectly, knowingly
18 denies access to the records for inspection. The right to
19 inspect the records includes the right to make or obtain
20 copies, at the reasonable expense, if any, of the association
21 member. The association may adopt reasonable rules regarding
22 the frequency, time, location, notice, and manner of record
23 inspections and copying. The failure of an association to
24 provide the records within 10 working days after receipt of a
25 written request creates a rebuttable presumption that the
26 association willfully failed to comply with this paragraph. A
27 unit owner who is denied access to official records is
28 entitled to the actual damages or minimum damages for the
29 association's willful failure to comply with this paragraph.
30 The minimum damages shall be \$50 per calendar day up to 10
31 days, the calculation to begin on the 11th day after receipt

1 of the written request. The association shall maintain an
2 adequate number of copies of the declaration, articles of
3 incorporation, bylaws, and rules, and all amendments to each
4 of the foregoing, as well as the question and answer sheet
5 provided for in s. 719.504, on the cooperative property to
6 ensure their availability to unit owners and prospective
7 purchasers, and may charge its actual costs for preparing and
8 furnishing these documents to those requesting the same.

9 Notwithstanding the provisions of this paragraph, the
10 following records shall not be accessible to unit owners:

11 1. A record that was prepared by an association
12 attorney or prepared at the attorney's express direction; that
13 reflects a mental impression, conclusion, litigation strategy,
14 or legal theory of the attorney or the association; or that
15 was prepared exclusively for civil or criminal litigation or
16 for adversarial administrative proceedings or in anticipation
17 of imminent civil or criminal litigation or imminent
18 adversarial administrative proceedings, until the conclusion
19 of the litigation or adversarial administrative proceedings.

20 2. Information obtained by an association in
21 connection with the approval of the lease, sale, or other
22 transfer of a unit.

23 3. Medical records of unit owners.

24 (d) The association or its authorized agent shall not
25 be required to provide a prospective purchaser or lienholder
26 with information about the cooperative or association other
27 than the information or documents required by this chapter to
28 be made available or disclosed. The association or its
29 authorized agent shall be entitled to charge a reasonable fee
30 to the prospective purchaser, lienholder, or the current unit
31 owner for its time in providing good faith responses to

1 requests for information by or on behalf of a prospective
2 purchaser or lienholder, other than that required by law,
3 provided that such fee shall not exceed \$150 plus the
4 reasonable cost of photocopying and any attorney's fees
5 incurred by the association in connection with the
6 association's response.

7 Section 6. Subsection (1) of section 719.303, Florida
8 Statutes, is amended to read:

9 719.303 Obligations of owners.--

10 (1) Each unit owner, each tenant and other invitee,
11 and each association shall be governed by, and shall comply
12 with the provisions of, this chapter, the cooperative
13 documents, the documents creating the association, and the
14 association bylaws, and the provisions thereof shall be deemed
15 expressly incorporated into any lease of a unit. Actions for
16 damages or for injunctive relief, or both, for failure to
17 comply with these provisions may be brought by the association
18 or by a unit owner against:

19 (a) The association.

20 (b) A unit owner.

21 (c) Directors designated by the developer, for actions
22 taken by them prior to the time control of the association is
23 assumed by unit owners other than the developer.

24 (d) Any director who willfully and knowingly fails to
25 comply with these provisions.

26 (e) Any tenant leasing a unit, and any other invitee
27 occupying a unit.

28
29 The prevailing party in any such action or in any action in
30 which the purchaser claims a right of voidability based upon
31 contractual provisions as required in s. 719.503(1)(a) is

1 entitled to recover reasonable attorney' s fees. A unit owner
2 prevailing in an action between the association and the unit
3 owner under this section, in addition to recovering his or her
4 reasonable attorney's fees, may recover additional amounts as
5 determined by the court to be necessary to reimburse the unit
6 owner for his or her share of assessments levied by the
7 association to fund its expenses of the litigation. This
8 relief does not exclude other remedies provided by law.
9 Actions arising under this subsection shall not be deemed to
10 be actions for specific performance.

11 Section 7. Section 720.302, Florida Statutes, is
12 amended to read:

13 720.302 Purposes, scope, and application.--

14 (1) The purposes of ss. 720.301-720.312 are to give
15 statutory recognition to corporations not for profit that
16 operate residential communities in this state, to provide
17 procedures for operating homeowners' associations, and to
18 protect the rights of association members without unduly
19 impairing the ability of such associations to perform their
20 functions.

21 (2) The Legislature recognizes that it is not in the
22 best interest of homeowners' associations or the individual
23 association members thereof to create or impose a bureau or
24 other agency of state government to regulate the affairs of
25 homeowners' associations. Further, the Legislature recognizes
26 that certain contract rights have been created for the benefit
27 of homeowners' associations and members thereof before the
28 effective date of this act and that ss. 720.301-720.312 are
29 not intended to impair such contract rights, including, but
30 not limited to, the rights of the developer to complete the
31 community as initially contemplated.

1 (3) Sections 720.301-720.312 do not apply to:
2 (a) A community that is composed of property primarily
3 intended for commercial, industrial, or other nonresidential
4 use; or
5 (b) The commercial or industrial parcels in a
6 community that contains both residential parcels and parcels
7 intended for commercial or industrial use.
8 (4) Sections 720.301-720.312 do not apply to any
9 association that is subject to regulation under chapter 718,
10 chapter 719, or chapter 721; or to any nonmandatory
11 association formed under chapter 723.
12 (5) Unless expressly stated to the contrary,
13 corporations not for profit that operate residential
14 homeowners' associations in this state shall be governed by
15 and subject to the provisions of chapter 617. This provision
16 is intended to clarify existing law.
17 Section 8. Subsection (5) is added to section
18 719.1055, Florida Statutes, to read:
19 719.1055 Amendment of cooperative documents; alteration
20 and acquisition of property.--
21 (5) Notwithstanding the provisions of chapter 633 or
22 of any other statute, ordinance, administrative rule, or
23 regulation, or any interpretation of the foregoing, an
24 association, cooperative, or individual unit owner is not
25 obligated to retrofit the common areas or units of a
26 residential cooperative with a fire sprinkler system or other
27 enhanced fire protection system in a building that has been
28 certified for occupancy by the applicable governmental entity,
29 if the unit owners have voted to forego such retrofitting by
30 the affirmative vote of two-thirds of all voting interests.
31 However, a high-rise building owner may not forego the

1 retrofitting of common areas. For purposes of this subsection,
2 the term "high-rise building" means a building that is greater
3 than 75 feet in height where the building height is measured
4 from the lowest level of fire department access to the floor
5 of the highest occupiable story. For purposes of this
6 subsection, the term "common areas" means any hallway,
7 corridor, lobby, stairwell, or entryway.

8 (a) A vote to forego retrofitting may not be obtained
9 by general proxy or limited proxy, but shall be obtained by a
10 vote personally cast at a duly called membership meeting, or
11 by execution of a written consent by the member, and shall be
12 effective upon the recording of a certificate attesting to
13 such vote in the public records of the county where the
14 cooperative is located. Such vote shall be held biannually, or
15 by majority vote of the board of directors of the cooperative
16 association, at the next annual meeting. The association shall
17 provide each unit owner written notice of the vote to forego
18 retrofitting of the required fire sprinkler system, in at
19 least 16-point bold type, by certified mail, within 20 days
20 after the association's vote. After such notice is provided to
21 each owner, a copy of such notice shall be provided by the
22 current owner to a new owner prior to closing and to a renter
23 prior to signing a lease.

24 (b) As part of the information collected from
25 cooperatives, the division shall require cooperative
26 associations to report the membership vote and recording of a
27 certificate under this subsection and, if retrofitting has
28 been undertaken, the per-unit cost of such work. The division
29 shall annually report to the Division of State Fire Marshal of
30 the Department of Financial Services the number of
31 cooperatives that have elected to forego retrofitting.

1 Section 9. This act shall take effect upon becoming a
2 law.

3
4 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
5 COMMITTEE SUBSTITUTE FOR
6 Senate Bill 1978

7 The committee substitute allows cooperatives to forego
8 retrofitting of individual units with enhanced fire protection
9 systems upon the affirmative vote of two-thirds of all voting
10 interests. Also, the committee substitute prohibits a
11 high-rise building owner from foregoing the retrofitting of
12 common areas. It defines "high-rise building" and "common
13 areas." Further, it contains notice provisions for
14 cooperatives and condominium associations in buildings that
15 vote affirmatively to forego retrofitting. It also restricts
16 the use of proxies in such vote and specifies such vote must
17 occur biannually or at the next annual meeting on a vote of
18 the majority of the board.

19 The committee substitute clarifies that attorney's fees paid
20 by a party requesting information from a cooperative or
21 condominium association must be incurred in connection with
22 the association's response. Also, it deletes language
23 providing immunity for cooperatives and condominium
24 associations that provide requested information to prospective
25 purchasers or lienholders. Finally, this committee substitute
26 deletes redundant provisions in the bill, and contains
27 clarifications and technical changes.
28
29
30
31