

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to community associations; directing the
7 Advisory Council on Condominiums to hold public hearings
8 and prepare and present a report to the Legislature
9 regarding certain issues relating to the powers of
10 condominium associations during catastrophic windstorm
11 events and the recovery and rebuilding following such
12 events; amending s. 720.305, F.S.; providing that a fine
13 levied by a homeowners' association against a homeowner
14 shall not become a lien against a parcel unless it is
15 imposed for violations of use restrictions on the land;
16 amending s. 720.311, F.S.; providing that the failure of a
17 party to make payment of fees and costs or appear for a
18 mediation session or arbitration proceeding acts as an
19 impasse in the proceeding and entitles the other party to
20 proceed in court and to receive and enforce an award of
21 costs and fees associated with the mediation or
22 arbitration; deleting the training hours required for
23 certification of mediators and arbitrators; providing that

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24 | qualifications for certification as a mediator or
 25 | arbitrator will be established by the Florida Supreme
 26 | Court; deleting a provision requiring the initial costs of
 27 | educating homeowners and other parties about homeowners'
 28 | associations and the use of alternative dispute resolution
 29 | techniques to be paid from moneys and filing fees
 30 | generated by the arbitration of recall and election
 31 | disputes and by the mediation of those disputes; amending
 32 | s. 718.112, F.S.; extending a period in which condominium
 33 | common areas do not have to be retrofitted with sprinkler
 34 | systems; creating s. 712.11, F.S.; providing for the
 35 | revival of certain declarations that have been
 36 | extinguished; providing an effective date.

37 |

38 | Be It Enacted by the Legislature of the State of Florida:

39 |

40 | Section 1. The Advisory Council on Condominiums is
 41 | directed to hold public hearings, study available options and
 42 | proposals, and prepare a report to the Legislature, including
 43 | recommended legislation, dealing with the protection and
 44 | preservation of condominium property at the time of anticipated
 45 | catastrophic windstorm events and the recovery and rebuilding
 46 | following such events. Recommendations should consider the
 47 | communication options with condominium owners in times of
 48 | anticipated and declared emergencies, financial planning for
 49 | protecting and rebuilding condominium property following such
 50 | events, and the powers and responsibilities of unit owners and

51 the board of directors of the condominium association before,
 52 during, and after such occurrences.

53 Section 2. Subsection (2) of section 720.305, Florida
 54 Statutes, is amended to read:

55 720.305 Obligations of members; remedies at law or in
 56 equity; levy of fines and suspension of use rights; failure to
 57 fill sufficient number of vacancies on board of directors to
 58 constitute a quorum; appointment of receiver upon petition of
 59 any member.--

60 (2) If the governing documents so provide, an association
 61 may suspend, for a reasonable period of time, the rights of a
 62 member or a member's tenants, guests, or invitees, or both, to
 63 use common areas and facilities and may levy reasonable fines,
 64 not to exceed \$100 per violation, against any member or any
 65 tenant, guest, or invitee. A fine may be levied on the basis of
 66 each day of a continuing violation, with a single notice and
 67 opportunity for hearing, except that no such fine shall exceed
 68 \$1,000 in the aggregate unless otherwise provided in the
 69 governing documents. A fine shall not become a lien against a
 70 parcel unless it is imposed for violations of use restrictions
 71 on the land. In any action to recover a fine, the prevailing
 72 party is entitled to collect its reasonable attorney's fees and
 73 costs from the nonprevailing party as determined by the court.

74 (a) A fine or suspension may not be imposed without notice
 75 of at least 14 days to the person sought to be fined or
 76 suspended and an opportunity for a hearing before a committee of
 77 at least three members appointed by the board who are not
 78 officers, directors, or employees of the association, or the

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79 spouse, parent, child, brother, or sister of an officer,
80 director, or employee. If the committee, by majority vote, does
81 not approve a proposed fine or suspension, it may not be
82 imposed.

83 (b) The requirements of this subsection do not apply to
84 the imposition of suspensions or fines upon any member because
85 of the failure of the member to pay assessments or other charges
86 when due if such action is authorized by the governing
87 documents.

88 (c) Suspension of common-area-use rights shall not impair
89 the right of an owner or tenant of a parcel to have vehicular
90 and pedestrian ingress to and egress from the parcel, including,
91 but not limited to, the right to park.

92 Section 3. Paragraphs (b) and (c) of subsection (2) and
93 subsection (3) of section 720.311, Florida Statutes, are amended
94 to read:

95 720.311 Dispute resolution.--

96 (2)

97 (b) If mediation as described in paragraph (a) is not
98 successful in resolving all issues between the parties, the
99 parties may file the unresolved dispute in a court of competent
100 jurisdiction or elect to enter into binding or nonbinding
101 arbitration pursuant to the procedures set forth in s. 718.1255
102 and rules adopted by the division, with the arbitration
103 proceeding to be conducted by a department arbitrator or by a
104 private arbitrator certified by the department. If all parties
105 do not agree to arbitration proceedings following an
106 unsuccessful mediation, any party may file the dispute in court.

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107 A final order resulting from nonbinding arbitration is final and
 108 enforceable in the courts if a complaint for trial de novo is
 109 not filed in a court of competent jurisdiction within 30 days
 110 after entry of the order. The failure of any party to make
 111 payment of fees and costs within the time established by
 112 department rule or to appear for a scheduled mediation session
 113 or arbitration proceeding shall operate as an impasse in the
 114 proceeding between the parties, entitling the other party to
 115 proceed in court and to receive and enforce an award of costs
 116 and fees associated with the mediation or arbitration.

117 (c) The department shall develop a certification and
 118 training program for private mediators and private arbitrators
 119 which shall emphasize experience and expertise in the area of
 120 the operation of community associations. A mediator or
 121 arbitrator shall be certified by the department only if he or
 122 she has met the qualifications for a mediator established for
 123 circuit court mediators ~~has attended at least 20 hours of~~
 124 ~~training in mediation or arbitration, as appropriate, and only~~
 125 ~~if the applicant has mediated or arbitrated at least 10 disputes~~
 126 ~~involving community associations within 5 years prior to the~~
 127 ~~date of the application, or has mediated or arbitrated 10~~
 128 ~~disputes in any area within 5 years prior to the date of~~
 129 ~~application and has completed 20 hours of training in community~~
 130 ~~association disputes. In order to be certified by the~~
 131 ~~department, any mediator must also be certified by the Florida~~
 132 Supreme Court. The department may conduct the training and
 133 certification program within the department or may contract with
 134 an outside vendor to perform the training or certification. The

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135 expenses of operating the training and certification and
 136 training program shall be paid by the moneys and filing fees
 137 generated by the arbitration of recall and election disputes and
 138 by the mediation of those disputes referred to in this
 139 subsection and by the training fees.

140 (3) The department shall develop an education program to
 141 assist homeowners, associations, board members, and managers in
 142 understanding and increasing awareness of the operation of
 143 homeowners' associations pursuant to this chapter and in
 144 understanding the use of alternative dispute resolution
 145 techniques in resolving disputes between parcel owners and
 146 associations or between owners. Such education program may
 147 include the development of pamphlets and other written
 148 instructional guides, the holding of classes and meetings by
 149 department employees or outside vendors, as the department
 150 determines, and the creation and maintenance of a website
 151 containing instructional materials. ~~The expenses of operating
 152 the education program shall be initially paid by the moneys and
 153 filing fees generated by the arbitration of recall and election
 154 disputes and by the mediation of those disputes referred to in
 155 this subsection.~~

156 Section 4. Paragraph (1) of subsection (2) of section
 157 718.112, Florida Statutes, is amended to read:

158 718.112 Bylaws.--

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

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162 (1) Certificate of compliance.--There shall be a provision
163 that a certificate of compliance from a licensed electrical
164 contractor or electrician may be accepted by the association's
165 board as evidence of compliance of the condominium units with
166 the applicable fire and life safety code. Notwithstanding the
167 provisions of chapter 633 or of any other code, statute,
168 ordinance, administrative rule, or regulation, or any
169 interpretation of the foregoing, an association, condominium, or
170 unit owner is not obligated to retrofit the common elements or
171 units of a residential condominium with a fire sprinkler system
172 or other engineered lifesafety system in a building that has
173 been certified for occupancy by the applicable governmental
174 entity, if the unit owners have voted to forego such
175 retrofitting and engineered lifesafety system by the affirmative
176 vote of two-thirds of all voting interests in the affected
177 condominium. However, a condominium association may not vote to
178 forego the retrofitting with a fire sprinkler system of common
179 areas in a high-rise building. For purposes of this subsection,
180 the term "high-rise building" means a building that is greater
181 than 75 feet in height where the building height is measured
182 from the lowest level of fire department access to the floor of
183 the highest occupiable story. For purposes of this subsection,
184 the term "common areas" means any enclosed hallway, corridor,
185 lobby, stairwell, or entryway. In no event shall the local
186 authority having jurisdiction require completion of retrofitting
187 of common areas with a sprinkler system before the end of 2020
188 ~~2014~~.

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189 1. A vote to forego retrofitting may be obtained by
190 limited proxy or by a ballot personally cast at a duly called
191 membership meeting, or by execution of a written consent by the
192 member, and shall be effective upon the recording of a
193 certificate attesting to such vote in the public records of the
194 county where the condominium is located. The association shall
195 mail, hand deliver, or electronically transmit to each unit
196 owner written notice at least 14 days prior to such membership
197 meeting in which the vote to forego retrofitting of the required
198 fire sprinkler system is to take place. Within 30 days after the
199 association's opt-out vote, notice of the results of the opt-out
200 vote shall be mailed, hand delivered, or electronically
201 transmitted to all unit owners. Evidence of compliance with this
202 30-day notice shall be made by an affidavit executed by the
203 person providing the notice and filed among the official records
204 of the association. After such notice is provided to each owner,
205 a copy of such notice shall be provided by the current owner to
206 a new owner prior to closing and shall be provided by a unit
207 owner to a renter prior to signing a lease.

208 2. As part of the information collected annually from
209 condominiums, the division shall require condominium
210 associations to report the membership vote and recording of a
211 certificate under this subsection and, if retrofitting has been
212 undertaken, the per-unit cost of such work. The division shall
213 annually report to the Division of State Fire Marshal of the
214 Department of Financial Services the number of condominiums that
215 have elected to forego retrofitting.

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216 Section 5. Section 712.11, Florida Statutes, is created to
217 read:

218 712.11 Covenants and restrictions.--A homeowners'
219 association that is not otherwise subject to chapter 720 may use
220 the procedures provided in ss. 720.403-720.407 to revive a
221 declaration of covenants and restrictions that has been
222 extinguished by this chapter entitled Marketable Record Titles
223 to Real Property.

224 Section 6. This act shall take effect upon becoming a law.