



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government -- This bill eliminates the current requirement that certain disputes between homeowners and homeowners associations be referred to the Department of Business and Professional Regulation for assignment of a mediator.

Safeguard Individual Liberty -- This bill decreases restrictions on condominium associations when amending declarations of condominium, articles of incorporation, or bylaws.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

A condominium is a "form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements".<sup>1</sup> A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.<sup>2</sup> A declaration is like a constitution in that it:

strictly governs the relationships among condominium units owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.<sup>3</sup>

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.<sup>4</sup> A declaration of condominium may be amended as provided in the declaration. If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of two-thirds of the units.<sup>5</sup>

Homeowners' association means a Florida corporation responsible for the operation of a community or a mobile home subdivision in which voting membership is made up of parcel ownership and in which membership is mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.<sup>6</sup>

##### **Effect of Bill**

##### Covenant Revitalization

This bill creates s. 712.11, F.S., to provide that a homeowner's association that is not subject to chapter 720 may use the procedures established in ss. 720.403, F.S. - 720.407, F.S., to revive covenants that have lapsed under the terms of chapter 712, F.S.

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<sup>1</sup> Section 718.103(11), F.S.

<sup>2</sup> Section 718.104(2), F.S.

<sup>3</sup> *Neuman v. Grand View at Emerald Hills*, 861 So.2d 494, 496-497 (Fla. 4th DCA 2003)

<sup>4</sup> Section 718.104(5), F.S.

<sup>5</sup> Section 718.110(1)(a), F.S.

<sup>6</sup> Section 720.301(9), F.S.

## Mortgagee Consent or Joinder of Amendments to Declaration of Condominium

Section 718.110(11), F.S., provides that any declaration of condominium recorded after April 1, 1992, may not require the consent or joinder of mortgagees in order for an association to pass an amendment to the declaration. This is limited to amendments which materially affect the rights or interests of the mortgagees, or as otherwise required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. Current law provides that such consent may not be unreasonably withheld. In the event mortgagee consent is provided other than by properly recorded joinder, such consent must be evidenced by affidavit of the association recorded in the public records of the county where the declaration is recorded.<sup>7</sup>

This bill amends s. 718.110(11), F.S., to provide that any provision in the declaration of condominium, articles of incorporation, or bylaws that requires the association to obtain consent or joinder of mortgagees to amend the declaration of condominium, articles of incorporation, or bylaws are void. This provision is not limited to amendments materially affecting the rights or interests of the mortgagees, or as otherwise required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. This bill also provides that consent or joinder are not to be unreasonably withheld, and that it is presumed that amendments to the declaration of condominium, articles of incorporation, or bylaws do not materially affect the rights or interests of mortgagees.

This bill provides findings by the Legislature that consent or joinder to amendments that do not materially affect the rights or interests of mortgagees is unreasonable and is a substantial burden on the condominium owners and association. This bill also provides that there is a compelling state interest in enabling condominium association members to approve amendments.

This bill provides that any holder of a mortgage on any portion of a condominium, which is recorded after October 1, 2006, and where the declaration of condominium, articles of incorporation, or bylaws require consent or joinder of a mortgagee to pass an amendment, must provide written notice by certified mail to the association of the address where the mortgagee may be contacted in regard to any proposed amendments.

The association must keep the names and addresses of the mortgagees, which the association must use when sending a request for such consent or joinder. A request for consent or joinder must be mailed to a mortgagee by certified mail to the address provided by the mortgagee. For a mortgage recorded after October 1, 2006, consent to an amendment is deemed to have been given by a holder of a mortgage who fails to provide the required written notice and consent information. In addition, any mortgagee who fails to respond by certified mail within 30 days after the date the association mails a request for consent or joinder is deemed to have consented to the proposed amendment.

For mortgages in existence prior to October 1, 2006, and where consent or joinder is required for amendments, and where mortgagees are not required to provide notice to the association of their contact information in order to be eligible to receive notices regarding proposed amendments, associations can modify provisions in the declaration of condominium, articles of incorporation, or bylaws. The Association must notify all mortgagees who have mortgages on any part of the condominium and mortgagees must provide the same contact information as for mortgages that are recorded after October 1, 2006. Any mortgagee who does not provide contact information as required will be deemed to have consented to all future proposed amendments. In addition, failure of any mortgagee to respond to a request for the consent or joinder to a proposed amendment within 30 days after the date that a request is sent to the mortgagee by certified mail shall be deemed to have consented to the amendment.

This bill provides that in order to properly notify holders of existing mortgages the condominium association conducts a diligent search to identify all existing mortgagees and an address for the

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<sup>7</sup> Section 718.110(11), F.S.

required notice to be sent to each mortgagee. Service of the notice must be on the mortgagee's registered agent. Where there is no registered agent, the notice shall be sent to the address in the original recorded mortgage unless there is a different address in a more recently recorded assignment or in the records maintained by the condominium association. All notices are sent by certified mail and if the mortgagee fails to provide the contact information requested within 30 days after the date of mailing of the letter from the association, then the mortgagee is deemed to have consented to the proposed amendment. A representative of the condominium association must execute an affidavit confirming that a diligent search was conducted to identify all outstanding mortgages on the condominium. The affidavit must summarize the steps that were taken in connection with the search and the notification of all mortgagees. The affidavit must be placed in the associations minute book as an attachment to the minutes of the meeting in which the board of directors considers the affidavit.

After October 1, 2006, no new declaration of condominium, articles of incorporation, or bylaws may require the consent or joinder of more than 51 percent of the eligible mortgagees in connection with any proposed amendment unless a higher percentage is required by the FNMA or FHLMC. New declaration of condominium, articles of incorporation, or bylaws must also require mortgagees to provide to the condominium association the address to which notices may be sent, in order for the mortgagees to have the right to be contacted in connection with any proposed amendments.

This bill provides that a provision requiring consent or joinder of holders of mortgages is enforceable only by mortgagees of record as of the date an amendment is recorded and only by mortgagees who have complied with providing the notice and contact information as required above. Any amendment adopted without the required consent of a mortgagee is deemed voidable by any mortgagee who was entitled to notice and the opportunity to consent.

This bill also provides that in order to establish that a mortgagee is not unreasonably withholding consent, he or she must include in his or her reply to the condominium association's request for consent or joinder a statement of the specific reasons the proposed amendment is claimed to materially and adversely affect the rights and interests of such mortgagee.

In connection with any litigation between a condominium association and a lender with regard to whether consent has been unreasonably withheld, the prevailing party is entitled to recover his or her costs and reasonable attorney's fees.

### Homeowners' Associations

Current law regulates homeowner associations in chapter 720, F.S., and s. 720.302, F.S., provides that this chapter does not apply to condominium associations. This bill amends s. 720.302, F.S., to provide an exception to the current law providing that chapter 720, which regulates homeowners' associations, does not apply to condominium associations.

This bill provides that chapter 720 does not apply to any association regulated under chapters 718 (condominiums), 719 (cooperatives), 721 (timeshares), or 723 (mobile home parks), except to the extent that a provision of chapter 718, 719, or 721 is expressly incorporated into chapter 720 for the purpose of regulating homeowners' associations.

This bill also provides that not for profit corporations that operated residential homeowners' associations in Florida are to be governed by and subject to chapter 607, if the association was incorporated under the provisions of that chapter, or to chapter 617, if the association was incorporated under the provisions of that chapter.

### Homeowners' Association Board Meetings

Section 720.303(2), F.S., specifies procedures for association board meetings. A meeting of the board occurs whenever a quorum of the board gathers to conduct association business. Board meetings are

open to all members, except for those meetings between the board and its attorney relating to proposed or pending litigation. Members also have the right to attend all board meetings and speak on any matter on the agenda for at least 3 minutes.

Notice of a board meeting must be posted in a conspicuous place in the community at least 48 hours prior to a meeting, except in an emergency. If notice of the board meeting is not posted in a conspicuous place, then notice of the board meeting must be mailed or delivered to each association member at least 7 days prior to the meeting, except in an emergency. For associations that have more than 100 members, the bylaws may provide for a reasonable alternative to this posting or mailing requirement. These alternatives include publication of notice, provision of a schedule of board meetings, conspicuous posting and repeated broadcasting of a notice in a certain format on a closed-circuit cable television system serving the association, or electronic transmission if the member consents in writing to such transmission.<sup>8</sup>

A board may not levy assessments at a meeting unless the notice of the meeting includes the nature of those assessments and a statement that the assessments will be considered at the meeting.<sup>9</sup>

Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This also applies to meetings of any committee or similar body when a final decision will be made regarding the spending of association funds. Proxy voting or secret ballots are also not allowed when a final decision will be made on approving or disapproving architectural decisions with respect to a specific parcel of residential property owned by a member of the community.<sup>10</sup>

This bill amends s. 720.303(2), F.S., as amended by section 18 of chapter 2004-345 and section 135 of chapter 2005-2, Laws of Florida,<sup>11</sup> as follows:

This bill amends s. 720.303(2)(a), F.S., to provide that provisions of this subsection also apply to the meetings of any committee or other similar body when a final decision is made regarding the spending of association funds and to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

This bill amends s. 720.303(2)(c)2., F.S., by changing the word "assessment" to "special assessment". Current law provides that, "an assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments". This bill repeats this sentence with the only change being to use the term "special assessment" instead of "assessment".

This bill amends s. 720.303(2)(c)3., F.S., to remove the provision, "this subsection also applies to meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community." Therefore, the general rule that Directors may not vote by proxy or by secret ballot does not apply to committee meetings or other similar body when a final decision will be made regarding the spending of association funds. The rule will also not apply to any body with the power to approve or disapprove architectural decisions.

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<sup>8</sup> Section 720.303(2)(c)1, F.S.

<sup>9</sup> Section 720.303(2)(c)2, F.S.

<sup>10</sup> Section 720.303(2)(c)3, F.S.

<sup>11</sup> In 2004 the Legislature passed SB 1184, which amended s. 720.303(2), F.S., in section 2 and section 18 of the bill. In 2004, the Legislature passed SB 2984, which also amended s. 720.303(2), F.S., in section 15 of the bill. This bill is amending s. 720.303(2), F.S., as amended by section 18 of chapter 2004-345 and section 135 of chapter 2005-2, Laws of Florida, and is repealing s. 720.303(2), F.S., as amended by section 2 of chapter 2004-345 and section 15 of chapter 2004-353, Laws of Florida.

This bill also repeals s. 720.303(2), F.S., as amended by section 2 of chapter 2004-345 and section 15 of chapter 2004-353, Laws of Florida, to remove conflicting versions of this subsection.

### Homeowners' Association Inspection and Copying of Records

Section 720.303(5), F.S., requires that a homeowners' association allow its members to inspect and copy its official records within 10 days of a written request for access. A failure to comply with such a request in a timely fashion creates a rebuttable presumption that the association failed to do so, and entitles the requesting party to actual damages, or to a minimum of \$50 per calendar day, commencing on the eleventh business day. A homeowners' association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not impose a requirement that a parcel owner demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including without limitation, the costs of copying. The association may charge up to 50 cents per page for copies made on the associations copy machine. If the association does not have a copy machine available where the records are kept, or if the records requested to be copied exceed 25 pages, then the association may have copies made by an outside vendor and may charge the actual cost of copying.

Current law expressly exempts the following from inspection by a member or parcel owner: any record protected by attorney-client or work-product privilege; information obtained in association with the lease, sale or transfer of a parcel that is otherwise privileged by state or federal law; disciplinary, health, insurance and personnel records of the association's employees; or medical records of parcel owners or other community residents.<sup>12</sup>

This bill amends s. 720.303(5), F.S., providing that the association or its agent is not required to provide a prospective purchaser or lienholder with information about the residential subdivision or the association unless required by this chapter to be made available or disclosed. This bill also provides that the association or agent may charge a reasonable fee to the prospective purchaser or lienholder or the current parcel owner or member for providing good faith responses to requests for information, except for information required by law. The fee cannot exceed \$150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

This bill provides that an association and its agent are not liable for providing information in good faith if the person providing the information includes a written statement in the following form: "The responses herein are made in good faith and to the best of my ability a to their accuracy."

### Homeowners' Association Financial Reporting

Section 720.303(7), F.S., requires homeowners' associations to prepare an annual financial report within 60 days after the close of the fiscal year. The association must provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member.

This bill amends s. 720.303(7), F.S., increasing, from 60 to 90, the number of days an association has to prepare and complete an annual financial report after the close of the fiscal year. Within 21 days after the final financial report is completed by the association, but no later than 120 days after the end of the fiscal year the association must provide each member with a copy of the annual financial report.

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<sup>12</sup> Section 720.303(1), (2), (3), (4), F.S.  
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## Meetings of Association Members; Amendments

Section 720.306(1)(c), F.S., provides that an amendment may not materially and adversely alter the proportionate voting interest attached to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association, unless all owners and lienholders join in the execution of the amendment. A change in quorum requirements is not an alteration of voting interests.

Section 720.306(6), F.S., provides that members and parcel owners have the right to attend all membership meetings and to speak at any meeting. A member and a parcel owner have the right to speak for at least 3 minutes on any agenda item, if the member or parcel owner submits a written request to speak prior to the meeting.

This bill amends s. 720.306(1)(c), F.S., adding the provision that the merger or consolidation of associations under ch. 607, F.S. (regulating corporations) or ch. 617, F.S. (regulating non-profit corporations), is not considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel.

This bill also amends s. 720.306(6), F.S., removing the phrase "opened for discussion". This change provides that members and parcel owners have the right to speak at any meeting with reference to all items on the agenda and not to all items opened for discussion or on the agenda. A member also has the right to speak for at least 3 minutes on any agenda item.

## Dispute Resolution

The Legislature recognized the role of alternative dispute resolution in reducing court dockets and trials and offering a more efficient, cost effective alternative to litigation. Section 720.311, F.S., established dispute resolution procedures for homeowners' associations and their members. Current law requires that recall disputes must be resolved by binding arbitration conducted by the Department of Business and Professional Regulation (department). Any recall dispute filed with the department must be conducted in accordance with the provisions of ss. 718.1255 and 718.112(2)(j), F.S., which establish requirements and procedures for the removal of condominium directors, and dispute resolution procedures for condominiums. Section 718.1255, F.S., requires that arbitration proceedings relating to the recall of a condominium director must be conducted pursuant to the arbitration procedures in s. 718.1255, F.S., and provides that, if the condominium association fails to comply with the final order of arbitration, the department may take action pursuant to s. 718.501, F.S. Section 718.501, F.S., establishes the powers and duties of the department, which include the power to conduct investigations, issue orders, conduct consent proceedings, bring actions in civil court on behalf of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution, and to assess civil penalties.

Section 720.311(1), F.S., provides that the department must conduct mandatory binding arbitration of election disputes in accordance with s. 718.1255, F.S. Election and recall disputes are not eligible for mediation. Current law requires a \$200 filing fee, and authorizes the department to assess the parties an additional fee in an amount adequate to cover the department's costs and expenses. The fee paid to the department must be a recoverable cost in the arbitration proceeding and the prevailing party must be paid its reasonable costs and attorney's fees in an amount found reasonable by the arbitrator. Section 720.311(1), F.S., provides that any petition for mediation or arbitration shall toll the applicable statute of limitations. The statute authorizes the department to adopt rules to implement this section.

Section 720.311(2)(a), F.S., provides that the following disputes must be filed with the department for mandatory mediation by the division before the dispute is filed in court:

- Disputes between an association and a parcel owner regarding use of, or changes to, the parcel or the common areas and other covenant enforcement disputes;
- Disputes regarding amendments to the association documents;

- Disputes regarding meetings of the board and committees appointed by the board;
- Disputes regarding membership meetings not including election meetings; and
- Disputes regarding access to the official records of the association.

The mediation would be conducted under the applicable Florida Rules of Civil Procedure, and the proceeding would be privileged and confidential to the same extent as court-ordered mediation. Current law provides that persons not a party to the suit may not attend the mediation conference without the consent of all the parties. Current law also requires a \$200 fee to defray the costs of the mandatory mediation, authorizes the department to charge additional fees to cover the costs of the mandatory mediation, and requires that the parties share the costs of mediation equally, unless the parties agree otherwise. If the mandatory mediation is not successful, the department may file the dispute in a court or enter the dispute into binding or non-binding arbitration to be conducted by the department or private arbitrator. Section 720.311(2)(d), F.S., provides that the mediation procedure may be used by non-mandatory homeowners' associations.

Section 720.311(2)(c), F.S., provides standards to division certification and training of mediators and arbitrators, and division certified mediators must also be certified by the Florida Supreme Court. Section 720.311(3), F.S., requires that the division develop an education program to assist homeowners' associations and their members and officers regarding the operation of homeowners' associations under chapter 720, F.S.

Section 720.311(d) provides that the department must develop an education program to assist homeowners, associations, board members, and managers in understanding the use of alternative dispute resolution techniques in resolving disputes between parcel owners and associations or between owners. Current law also provides that the certification program for arbitrators and mediators and the education program for homeowners' associations and their members would be funded by moneys and filing fees generated by the arbitration and mediation proceedings.

This bill amends s. 720.311, F.S., to provide:

- That all references to mediation be changed to "presuit" mediation;
- That disputes subject to presuit mediation do not include the collection of any assessments, fine, or other financial obligation, including attorney's fees and costs, or any action to enforce a prior mediation settlement;
- That the presuit mediation requirements of s. 720.311, F.S., do not apply to any dispute where emergency relief is required;
- A form for the written offer to participate in presuit mediation that must be substantially followed by the aggrieved party and which is served on the responding party. The form is titled "Statutory Offer To Participate In Presuit Mediation" and is a boilerplate form that a party must use or substantially follow when making an offer to participate in presuit mediation. The form provides that the party may waive presuit mediation so that this matter may proceed directly to court;
- That service of the statutory offer is effected by sending the statutory form, or a letter that conforms substantially to the statutory form, by certified mail, with an additional copy being sent regular first-class mail, to the address of the responding party as it appears on the books and records of the association;
- That dispute resolution to resolve disputes between associations and a parcel owner is no longer within the jurisdiction of the Department of Business and Professional Regulation. This bill removes all provisions that reference the department found in s. 720.311, F.S.;
- That the responding party will have 20 days from the date the offer is mailed to serve a response in writing. The response is to be served by certified mail, with an additional copy being sent by regular first-class mail to the address shown on the offer;
- That the mediator may require advance payment of fees and costs. This bill removes the \$200 filing fee requirement, and other language providing for the fees for a department mediator.



- That failure of either party to appear for mediation, respond to the offer, agree on a mediator, or pay the fees and costs will entitle the other party to seek an award of the costs and fees associated with mediation;
- That if presuit mediation cannot be conducted within 90 days after the offer to participate then an impasse will be deemed unless both parties agree to extend the deadline;
- That any issue or dispute that is not resolved at presuit mediation, the prevailing party in any subsequent arbitration or litigation proceeding shall be entitled to seek recovery of all costs and attorney's fees incurred in the presuit mediation process.

### Proposed Revived Declaration

Section 720.405(4), F.S., provides that the proposed revived declaration and other governing documents for the community shall:

- Provide that the voting interest of each parcel owner is the same as the voting interest of the parcel owner under the previous governing documents;
- Provide that the proportional-assessment obligations of each parcel owner is the same as proportional-assessment obligations of the parcel owner under the previous governing documents;
- Contain the same respective amendment provisions as the previous governing documents or, if there were no amendment provisions in the previous governing document, amendment provisions that require approval of not less than two-thirds of the affected parcel owners;
- Contain no covenants that are more restrictive on the affected parcel owners than the covenants contained in the previous governing documents, except as allowed under s. 720.404(3), F.S.; and
- Comply with the other requirements for a declaration of covenants and other governing documents as specified in ch. 720, F.S.

This bill amends section 720.405(4), F.S., removing subsection (d), which provides that a proposed revived declaration and other governing documents of the community must contain no covenants that are more restrictive on the affected parcel owners than the covenants contained in the previous governing documents. By removing this provision it appears that revived declarations and other governing documents could have covenants that are more restrictive than covenants contained in previous governing documents.

This change has possible constitutional problems and seems to be inconsistent with s. 720.404(3), F.S., which provides that "the revived declaration may not contain covenants that are more restrictive on the parcel owners than the covenants contained in the previous declaration". The statute then lists a few narrow exceptions to the general rule. Removing the requirement in s. 720.405(4)(d), F.S., could allow more restrictive covenants to be placed on a parcel owner's property than the parcel owner agreed to in the original declaration.

### C. SECTION DIRECTORY:

Section 1 creates s. 712.11, F.S., to provide that homeowners' associations may use procedures established in ss. 720.403, F.S. - 720.407, F.S., to revive covenants that have lapsed under the terms of Chapter 712, F.S.

Section 2 amends s. 718.110, F.S., providing for certain procedures for amending declarations of condominium, articles of incorporation, or bylaws, where the declarations of condominium, articles of incorporation, or bylaws requires the association to obtain consent and joinder of mortgagees.

Section 3 amends s. 720.302, F.S., to provide an exception to the current law that ch. 720, F.S., does not apply to any association under ch. 718, F.S., ch. 719, F.S., or ch. 721, F.S.

Section 4 amends s. 720.303, F.S., to provide that provisions under 720.303(2), F.S. also apply to committee meetings when a decision will be made on spending association funds, and to meetings of any body that has the power to make architectural decisions. This section also amends 720.303(5), F.S., to provide for when an association is not required to provide information about the residential subdivision or the association, that the association may charge a fee up to \$500 for providing this information, and for when an association is not liable for providing such information. This section amends 720.303(7), F.S., revising the time period for when an association must prepare and complete a financial report for the preceding fiscal year.

Section 5 repeals s. 720.303(2), F.S.

Section 6 amends s. 720.306, F.S., revising provisions pertaining to meetings of members and amendments providing that merger or consolidation of associations is not considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel, and providing that members and parcel owners have the right to speak at any meeting in reference to all agenda items.

Section 7 amends s. 720.311, F.S., revising the dispute resolution provisions for disputes between an association and a parcel owner. This section removes all references to the Department of Business and Professional Regulation. This section also provides a statutory form to be used as the written offer to participate in presuit mediation, and provides that service of the offer be accomplished by sending the offer in a certain manner.

Section 8 amends s. 720.405, F.S., revising provisions relating to the proposed revived declaration and other governing documents for the community.

Section 9 provides an effective date of July 1, 2006, except as otherwise expressly provided in this bill.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

Unknown. See Fiscal Comments.

#### **2. Expenditures:**

Unknown. See Fiscal Comments.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill may allow increased costs to purchasers or sellers of homes that are in a homeowners association. The fee cannot exceed \$150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

It is unclear whether this bill will increase or decrease the cost to homeowners and homeowners associations relating to mediation of disputes. Under current law, such disputes are mediated by the

Department of Business and Professional Regulation for \$200. This bill eliminates the \$200 fee, but requires private mediation at a cost to be negotiated between the parties.

D. FISCAL COMMENTS:

This bill appears to reduce recurring revenues and recurring expenses of the Department of Business and Professional Regulation. This bill eliminates the responsibility for conducting homeowners association mediation, and eliminates the \$200 fee charged per mediation. The department has not provided a fiscal estimate.<sup>13</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

This bill amends s. 718.110, F.S., providing that any provision in the declaration of condominium, articles of incorporation, or bylaws that requires consent or joinder of mortgagees to be obtained to pass an amendment to either of these documents "shall be void to the extent not limited to amendments materially affecting the rights or interests of the mortgagees". Passage of this bill would make any provision requiring consent or joinder from mortgagees before amending the above documents void. There is no provision in the bill saying whether this would only affect declarations, articles of incorporation, or bylaws that are passed after the effective date of the bill. Therefore, this bill could be interpreted as pertaining to all declarations, articles of incorporation, or bylaws that have consent or joinder requirements, existing before the effective date of the bill and after.

This bill also provides that, for mortgages in existence prior to the effective date of this bill, associations can modify their declarations, articles of incorporation, or bylaws to require mortgagees to provide notice to the association of their contact information in order to be eligible to receive notices regarding proposed amendments. All the associations must do is notify all mortgagees of the need to provide this contact information. This bill then provides that if mortgagees do not provide the information then the mortgagees will be deemed to have consented to all amendments.

Article I, s. 10, Fla.Const., provides:

**SECTION 10. Prohibited laws.**--No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

A mortgage is a contract between a lender and a property owner. It is possible that a lender may have agreed to lend money to a condominium owner only if the lender would receive certain notifications and have the opportunity to object to amendments that could adversely affect the lender. To the extent that a lender relied on such provisions, this bill may affect the lender's ability to enforce such contract terms. If so, this bill may perhaps impair the obligation of a contract and this portion of the bill may not be enforced by a court.

B. RULE-MAKING AUTHORITY:

None.

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<sup>13</sup> Fiscal comments requested on January 17, 2006.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

N/A