

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1105 Community Associations
SPONSOR(S): Safety & Security Council; Rivera
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Courts</u>	<u>6 Y, 0 N</u>	<u>Webb</u>	<u>Bond</u>
2) <u>Safety & Security Council</u>	<u>15 Y, 0 N, As CS</u>	<u>Webb/Davis</u>	<u>Havlicak</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

A receiver is a "disinterested person appointed by a court, or by a corporation or other person, for the protection or collection of property that is the subject of the diverse claims." Like other entities, condominium associations, cooperative associations, and homeowners' associations may be placed into receivership. This bill provides for notice of a unit or parcel owner's intent to file a petition for the appointment of a receiver to all unit or parcel owners of an association at least 30 days before the filing of the petition.

Condominium, cooperative and homeowners' associations may impose a lien against an owner for unpaid assessments, which lien may be foreclosed. Current law requires 30 days notice before the filing of a lien against a member of a homeowners' association. This bill also provides that liens by an association against condominium and cooperative owners may not be filed until 30 days after a notice of intent to file a lien is served on the unit owner.

This bill does not appear to have a fiscal impact on state or local government revenues or expenditures. This bill increases the cost to a private individual seeking receivership of his or her association by \$5.25 per unit or parcel in the association, unless the notice is served by personal delivery.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty -- This bill increases restrictions on condominium, cooperatives and homeowners' associations.

B. EFFECT OF PROPOSED CHANGES:

Background

A receiver is a "disinterested person appointed by a court, or by a corporation or other person, for the protection or collection of property that is the subject of the diverse claims."¹ Current law provides that if a condominium association or a homeowners association has vacancies on the board that prevent the board from obtaining a quorum, any unit or parcel owner may apply to the circuit court for the appointment of a receiver to manage the affairs of the association.²

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".³ A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.⁴

Chapter 719, F.S., governs cooperatives. Cooperatives are a form of ownership of real property where "legal title is vested in a corporation or other entity and the beneficial use is evidence by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property."⁵ A cooperative is created by cooperative documents which include, but are not limited to, articles of incorporation of the association, bylaws and the ground lease or other underlying lease if any.⁶

Homeowners' association means a Florida corporation responsible for the operation of a subdivision in which voting membership is made up of parcel ownership and in which membership is a mandatory condition of parcel ownership and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.⁷ Homeowners' associations are regulated under chapter 720, F.S.

Effect of Bill

Notice of Receivership

Current Law

Current law provides that at least 30 days before the filing of a petition for receivership, the unit or parcel owner in either a condominium association or a homeowners' association must mail to the association and post in a conspicuous place a notice describing his or her intent to file the petition. If the association is able to fill the vacancy or vacancies sufficient to constitute a quorum, then the owner

¹ Garner, Bryan. Black's Law Dictionary, Second Pocket Edition (St. Paul, Minn. 2001).

² Section 718.1124, F.S.; Section 720.305, F.S.

³ Section 718.103(11), F.S.

⁴ Section 718.104(2), F.S.

⁵ Section 719.103(12), F.S.

⁶ Section 719.103(13)(a), F.S.

⁷ Section 720.301(9), F.S.

may not file an action for receivership. If the association does not fill the vacancies, the unit or parcel owner may proceed with the petition. If a receiver is appointed, then the association is responsible for the receiver's salary, court costs, and attorney's fees. Furthermore, the receiver has the power and duties of the board of administration and must serve until the association fills the vacancies on the board.⁸

Cooperatives do not currently require notice before the filing of a petition for receivership.

Proposed Changes

This bill amends current law related to condominiums, cooperatives, and homeowners' association and creates ss. 718.127, 719.1124, 719.127, 720.3053, and 720.313, F.S. to provide that a unit or parcel owner must give notice to all the members of an association in addition to the association itself of his or her intent to apply to the circuit court for a receiver. The required form for the notice is within the relevant sections and provides in part that the unit or parcel owner intends to file a petition for the appointment of a receiver.

This bill provides that the notice must be sent at least 30 days prior to the filing of the petition seeking receivership by certified mail or personal delivery to the association and every unit or parcel owner. This bill provides that the notice must state that if a receiver is appointed, then the receiver will have all the powers of the board and be entitled to receive a salary and reimbursement of costs and attorney's fees from association funds. If the association does not fill the vacancies within 30 days, then the unit or parcel owner may proceed with the petition.

This bill provides that if a receivership is appointed, then the court must direct the receiver to provide all unit or parcel owners written notice of his or her appointment. The notice must be mailed or delivered within 10 days after the appointment. Other grounds for receivership include concluding the affairs of an association after a natural disaster or appointment to collect assessments or amounts due pending litigation. This 10 day notice applies to all receiverships. If notice is sent by mail, then it must be sent to the address used by the county property appraiser. Furthermore, this bill provides that a receiver must serve until the association fills the vacancies on the board and the court relieves the receiver of the appointment.

Notice of Liens

Current Law

Condominium, cooperatives and homeowners' association unit and parcel owners are liable for all assessments on the condominium or cooperative.⁹ The association has a lien on each condominium, cooperative, or homeowners' association unit or parcel to secure the payment of assessments.¹⁰ No foreclosure may be filed against a parcel owner in a homeowners' association until at least 30 days after the association gives written notice to the parcel owner of its intention to foreclose its lien to collect the unpaid assessments.¹¹ There is no corresponding 30 day requirement applicable to condominiums or cooperatives.

Proposed Changes

Similar to homeowners' associations, this bill provides that a lien by an association may not be filed against a cooperative or a condominium unit owner until 30 days after the date on which a notice of

⁸ Section 718.1124, F.S.; Section 720.305, F.S.

⁹ Section 718.103(1), F.S.; Section 718.111(4), F.S.; Section 719.108(5), F.S.; Section 720.3085(1), F.S.

¹⁰ *Id.*

¹¹ *Id.*

intent to file a lien has been served to the owner of the condominium or cooperative by certified mail or personal service in the manner authorized by ch. 48, F.S.¹², and the Florida Rules of Civil Procedure.

C. SECTION DIRECTORY:

Section 1 amends s. 718.1124, F.S., relating to the failure to fill vacancies on the board of administration.

Section 2 amends s. 718.117, F.S., relating to the termination of condominiums.

Section 3 amends s. 718.121, relating to liens.

Section 4 creates s. 718.127, F.S., relating to receivership notice.

Section 5 amends s. 719.108, F.S., relating to rents and assessments, liability, and liens and priority.

Section 6 creates s. 719.1124, F.S., relating to the failure to fill vacancies on the board of administration.

Section 7 creates s. 719.127, F.S., relating to receivership notification.

Section 8 amends s. 720.305, F.S., relating to the obligations of members and remedies at law or in equity.

Section 9 creates s. 720.3053, F.S., relating to the failure to fill vacancies on the board of directors.

Section 10 creates s. 720.313, F.S., relating to receivership notification.

Section 11 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

¹² Chapter 48, F.S., provides for process and service of process.

The additional notice requirements required by this bill could increase the cost to a person seeking receivership of his or her association. If a person seeking a receivership cannot serve the notices to the unit owners by personal delivery, then they must send the notice by mail. Current postage for certified mail return receipt requested is \$5.25.¹³

D. FISCAL COMMENTS:

None.

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No Statement Submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 12, 2008, the Committee on Courts adopted two amendments to this bill. The amendments added that no lien *by an association* may be filed against a condominium unit or a cooperative parcel until after the notice of intent to file a lien was served on the unit owner.

On March 26, 2008, the Safety & Security Council reported the bill favorably as a council substitute. This analysis is drafted to the council substitute.

¹³ Current postage for a first-class mail letter is \$0.41; current cost for certified mail of a letter is \$2.65; current cost for return receipt requested of a letter is \$2.15. See www.usps.com. (Last accessed on March 25, 2008.)