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CS/HB 1105, Engrossed 1

2008 Legislature

1 A bill to be entitled
 2 An act relating to community associations; amending s.
 3 718.1124, F.S., and creating ss. 719.1124 and 720.3053,
 4 F.S.; providing for notification of a unit owner's or
 5 member's intent to petition for the appointment of a
 6 receiver if an association's governing board fails to fill
 7 vacancies sufficient to constitute a quorum; providing for
 8 written notice to unit owners or members of any such
 9 appointment; requiring the salary of the receiver and
 10 certain costs and fees to be paid by the association;
 11 providing powers, duties, and term of service of the
 12 receiver; amending s. 718.117, F.S., and creating ss.
 13 718.127, 719.127, and 720.313, F.S.; specifying
 14 receivership notification requirements with respect to
 15 condominium associations, cooperative associations, and
 16 homeowners' associations; amending s. 718.121, F.S.;
 17 providing requirements and restrictions for liens filed by
 18 the association against a condominium unit; providing for
 19 notice and delivery thereof; amending s. 719.108, F.S.;
 20 prohibiting a lien from being filed against a condominium
 21 unit or cooperative parcel until 30 days after service of
 22 a notice of intent to file the lien; amending s. 720.305,
 23 F.S.; deleting notification requirements for the
 24 appointment of a receiver under specified circumstances
 25 for matters relating to homeowners' associations;
 26 providing an effective date.

27
 28 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Section 718.1124, Florida Statutes, is amended to read:

718.1124 Failure to fill vacancies on board of administration sufficient to constitute a quorum; appointment of receiver upon petition of unit owner.--

(1) If an association fails to fill vacancies on the board of administration sufficient to constitute a quorum in accordance with the bylaws, any unit owner may give notice of his or her intent to apply to the circuit court within whose jurisdiction the condominium lies for the appointment of a receiver to manage the affairs of the association. The form of the notice shall be as follows:

NOTICE OF INTENT TO APPLY FOR RECEIVERSHIP

YOU ARE HEREBY NOTIFIED that the undersigned owner of a condominium unit in (name of condominium) intends to file a petition in the circuit court for appointment of a receiver to manage the affairs of the association on the grounds that the association has failed to fill vacancies on the board of administration sufficient to constitute a quorum. This petition will not be filed if the vacancies are filled within 30 days after the date on which this notice was sent or posted, whichever is later. If a receiver is appointed, the receiver shall have all of the powers of the board and shall be entitled to receive a salary

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57 and reimbursement of all costs and attorney's fees
 58 payable from association funds.

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 60 (name and address of petitioning unit owner)

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 62 (2) The notice required by subsection (1) must be provided
 63 by ~~At least 30 days prior to applying to the circuit court,~~ the
 64 unit owner ~~shall mail~~ to the association by certified mail or
 65 personal delivery, must be posted and post in a conspicuous
 66 place on the condominium property, and must be provided to every
 67 unit owner of the association by certified mail or personal
 68 delivery. The a notice must be posted and mailed or delivered at
 69 least 30 days prior to the filing of a petition seeking
 70 receivership. Notice by mail to a unit owner shall be sent to
 71 the address used by the county property appraiser for notice to
 72 the unit owner describing the intended action, giving the
 73 association the opportunity to fill the vacancies.

74 (3) If during such time the association fails to fill the
 75 vacancies within 30 days after the notice required by subsection
 76 (1) is posted and mailed or delivered, the unit owner may
 77 proceed with the petition.

78 (4) If a receiver is appointed, all unit owners shall be
 79 given written notice of such appointment as provided in s.
 80 718.127.

81 (5) The association shall be responsible for the salary of
 82 the receiver, court costs, and attorney's fees. The receiver
 83 shall have all powers and duties of a duly constituted board of
 84 administration and shall serve until the association fills

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85 vacancies on the board sufficient to constitute a quorum and the
 86 court relieves the receiver of the appointment.

87 Section 2. Paragraph (a) of subsection (7) of section
 88 718.117, Florida Statutes, is amended to read:

89 718.117 Termination of condominium.--

90 (7) NATURAL DISASTERS.--

91 (a) If, after a natural disaster, the identity of the
 92 directors or their right to hold office is in doubt, if they are
 93 deceased or unable to act, if they fail or refuse to act, or if
 94 they cannot be located, any interested person may petition the
 95 circuit court to determine the identity of the directors or, if
 96 found to be in the best interests of the unit owners, to appoint
 97 a receiver to conclude the affairs of the association after a
 98 hearing following notice to such persons as the court directs.
 99 Lienholders shall be given notice of the petition and have the
 100 right to propose persons for the consideration by the court as
 101 receiver. If a receiver is appointed, the court shall direct the
 102 receiver to provide to all unit owners written notice of his or
 103 her appointment as receiver. Such notice shall be mailed or
 104 delivered within 10 days after the appointment. Notice by mail
 105 to a unit owner shall be sent to the address used by the county
 106 property appraiser for notice to the unit owner.

107 Section 3. Subsection (4) is added to section 718.121,
 108 Florida Statutes, to read:

109 718.121 Liens.--

110 (4) Except as otherwise provided in this chapter, no lien
 111 may be filed by the association against a condominium unit until
 112 30 days after the date on which a notice of intent to file a

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113 lien has been delivered to the owner by registered or certified
 114 mail, return receipt requested, and by first-class United States
 115 mail to the owner at his or her last address as reflected in the
 116 records of the association, if the address is within the United
 117 States, and delivered to the owner at the address of the unit if
 118 the owner's address as reflected in the records of the
 119 association is not the unit address. If the address reflected in
 120 the records is outside the United States, sending the notice to
 121 that address and to the unit address by first-class United
 122 States mail is sufficient. Delivery of the notice shall be
 123 deemed given upon mailing as required by this subsection.

124 Section 4. Section 718.127, Florida Statutes, is created
 125 to read:

126 718.127 Receivership notification.--Upon the appointment
 127 of a receiver by a court for any reason relating to a
 128 condominium association, the court shall direct the receiver to
 129 provide to all unit owners written notice of his or her
 130 appointment as receiver. Such notice shall be mailed or
 131 delivered within 10 days after the appointment. Notice by mail
 132 to a unit owner shall be sent to the address used by the county
 133 property appraiser for notice to the unit owner.

134 Section 5. Subsection (4) of section 719.108, Florida
 135 Statutes, is amended to read:

136 719.108 Rents and assessments; liability; lien and
 137 priority; interest; collection; cooperative ownership.--

138 (4) The association shall have a lien on each cooperative
 139 parcel for any unpaid rents and assessments, plus interest,
 140 against the unit owner of the cooperative parcel. If authorized

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141 by the cooperative documents, said lien shall also secure
 142 reasonable attorney's fees incurred by the association incident
 143 to the collection of the rents and assessments or enforcement of
 144 such lien. The lien is effective from and after the recording of
 145 a claim of lien in the public records in the county in which the
 146 cooperative parcel is located which states the description of
 147 the cooperative parcel, the name of the unit owner, the amount
 148 due, and the due dates. The lien shall expire if a claim of lien
 149 is not filed within 1 year after the date the assessment was
 150 due, and no such lien shall continue for a longer period than 1
 151 year after the claim of lien has been recorded unless, within
 152 that time, an action to enforce the lien is commenced in a court
 153 of competent jurisdiction. No lien may be filed by the
 154 association against a cooperative parcel until 30 days after the
 155 date on which a notice of intent to file a lien has been served
 156 on the unit owner of the cooperative parcel by certified mail or
 157 by personal service in the manner authorized by chapter 48 and
 158 the Florida Rules of Civil Procedure.

159 Section 6. Section 719.1124, Florida Statutes, is created
 160 to read:

161 719.1124 Failure to fill vacancies on board of
 162 administration sufficient to constitute a quorum; appointment of
 163 receiver upon petition of unit owner.--

164 (1) If an association fails to fill vacancies on the board
 165 of administration sufficient to constitute a quorum in
 166 accordance with the bylaws, any unit owner may give notice of
 167 his or her intent to apply to the circuit court within whose
 168 jurisdiction the cooperative lies for the appointment of a

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169 receiver to manage the affairs of the association. The form of
 170 the notice shall be as follows:

172 NOTICE OF INTENT TO APPLY FOR RECEIVERSHIP

174 YOU ARE HEREBY NOTIFIED that the undersigned owner of
 175 a unit in (name of cooperative) intends to file a
 176 petition in the circuit court for appointment of a
 177 receiver to manage the affairs of the association on
 178 the grounds that the association has failed to fill
 179 vacancies on the board of administration sufficient to
 180 constitute a quorum. This petition will not be filed
 181 if the vacancies are filled within 30 days after the
 182 date on which this notice was sent or posted,
 183 whichever is later. If a receiver is appointed, the
 184 receiver shall have all of the powers of the board and
 185 shall be entitled to receive a salary and
 186 reimbursement of all costs and attorney's fees payable
 187 from association funds.

189 (name and address of petitioning unit owner)

191 (2) The notice required by subsection (1) must be provided
 192 by the unit owner to the association by certified mail or
 193 personal delivery, must be posted in a conspicuous place on the
 194 cooperative property, and must be provided to every unit owner
 195 of the association by certified mail or personal delivery. The
 196 notice must be posted and mailed or delivered at least 30 days

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197 prior to the filing of a petition seeking receivership. Notice
 198 by mail to a unit owner shall be sent to the address used by the
 199 county property appraiser for notice to the unit owner.

200 (3) If the association fails to fill the vacancies within
 201 30 days after the notice required by subsection (1) is posted
 202 and mailed or delivered, the unit owner may proceed with the
 203 petition.

204 (4) If a receiver is appointed, all unit owners shall be
 205 given written notice of such appointment as provided in s.
 206 719.127.

207 (5) The association shall be responsible for the salary of
 208 the receiver, court costs, and attorney's fees. The receiver
 209 shall have all powers and duties of a duly constituted board of
 210 administration and shall serve until the association fills
 211 vacancies on the board sufficient to constitute a quorum and the
 212 court relieves the receiver of the appointment.

213 Section 7. Section 719.127, Florida Statutes, is created
 214 to read:

215 719.127 Receivership notification.--Upon the appointment
 216 of a receiver by a court for any reason relating to a
 217 cooperative association, the court shall direct the receiver to
 218 provide to all unit owners written notice of his or her
 219 appointment as receiver. Such notice shall be mailed or
 220 delivered within 10 days after the appointment. Notice by mail
 221 to a unit owner shall be sent to the address used by the county
 222 property appraiser for notice to the unit owner.

223 Section 8. Subsection (4) of section 720.305, Florida
 224 Statutes, is amended to read:

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225 720.305 Obligations of members; remedies at law or in
 226 equity; levy of fines and suspension of use rights; ~~failure to~~
 227 ~~fill sufficient number of vacancies on board of directors to~~
 228 ~~constitute a quorum; appointment of receiver upon petition of~~
 229 ~~any member. --~~

230 ~~(4) If an association fails to fill vacancies on the board~~
 231 ~~of directors sufficient to constitute a quorum in accordance~~
 232 ~~with the bylaws, any member may apply to the circuit court that~~
 233 ~~has jurisdiction over the community served by the association~~
 234 ~~for the appointment of a receiver to manage the affairs of the~~
 235 ~~association. At least 30 days before applying to the circuit~~
 236 ~~court, the member shall mail to the association, by certified or~~
 237 ~~registered mail, and post, in a conspicuous place on the~~
 238 ~~property of the community served by the association, a notice~~
 239 ~~describing the intended action, giving the association 30 days~~
 240 ~~to fill the vacancies. If during such time the association fails~~
 241 ~~to fill a sufficient number of vacancies so that a quorum can be~~
 242 ~~assembled, the member may proceed with the petition. If a~~
 243 ~~receiver is appointed, the homeowners' association shall be~~
 244 ~~responsible for the salary of the receiver, court costs,~~
 245 ~~attorney's fees, and all other expenses of the receivership. The~~
 246 ~~receiver has all the powers and duties of a duly constituted~~
 247 ~~board of directors and shall serve until the association fills a~~
 248 ~~sufficient number of vacancies on the board so that a quorum can~~
 249 ~~be assembled.~~

250 Section 9. Section 720.3053, Florida Statutes, is created
 251 to read:

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252 720.3053 Failure to fill vacancies on board of directors
 253 sufficient to constitute a quorum; appointment of receiver upon
 254 petition of member.--

255 (1) If an association fails to fill vacancies on the board
 256 of directors sufficient to constitute a quorum in accordance
 257 with the bylaws, any member may give notice of the member's
 258 intent to apply to the circuit court within whose jurisdiction
 259 the association lies for the appointment of a receiver to manage
 260 the affairs of the association. The form of the notice shall be
 261 as follows:

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 263 NOTICE OF INTENT TO APPLY FOR RECEIVERSHIP

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 265 YOU ARE HEREBY NOTIFIED that the undersigned member of
 266 (name of homeowners' association) intends to file a
 267 petition in the circuit court for appointment of a
 268 receiver to manage the affairs of the association on
 269 the grounds that the association has failed to fill
 270 vacancies on the board of directors sufficient to
 271 constitute a quorum. This petition will not be filed
 272 if the vacancies are filled within 30 days after the
 273 date on which this notice was sent or posted,
 274 whichever is later. If a receiver is appointed, the
 275 receiver shall have all of the powers of the board and
 276 shall be entitled to receive a salary and
 277 reimbursement of all costs and attorney's fees payable
 278 from association funds.

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280 (name and address of petitioning member)

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 282 (2) The notice required by subsection (1) must be provided
 283 by the member to the association by certified mail or personal
 284 delivery, must be posted in a conspicuous place within the
 285 homeowners' association, and must be provided to every member of
 286 the association by certified mail or personal delivery. The
 287 notice must be posted and mailed or delivered at least 30 days
 288 prior to the filing of a petition seeking receivership. Notice
 289 by mail to a member shall be sent to the address used by the
 290 county property appraiser for notice to the member.

291 (3) If the association fails to fill the vacancies within
 292 30 days after the notice required by subsection (1) is posted
 293 and mailed or delivered, the member may proceed with the
 294 petition.

295 (4) If a receiver is appointed, all members shall be given
 296 written notice of such appointment as provided in s. 720.313.

297 (5) The association shall be responsible for the salary of
 298 the receiver, court costs, and attorney's fees. The receiver
 299 shall have all powers and duties of a duly constituted board of
 300 directors and shall serve until the association fills vacancies
 301 on the board sufficient to constitute a quorum and the court
 302 relieves the receiver of the appointment.

303 Section 10. Section 720.313, Florida Statutes, is created
 304 to read:

305 720.313 Receivership notification.--Upon the appointment
 306 of a receiver by a court for any reason relating to a
 307 homeowners' association, the court shall direct the receiver to

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308 provide to all members written notice of his or her appointment
309 as receiver. Such notice shall be mailed or delivered within 10
310 days after the appointment. Notice by mail to a member shall be
311 sent to the address used by the county property appraiser for
312 notice to the owner of the property.

313 Section 11. This act shall take effect July 1, 2008.