

By Senator Margolis

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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 ss. 718.121 and  
17 719.108, F.S.; prohibiting a lien from being filed against  
18 a condominium unit or cooperative parcel until 30 days  
19 after service of a notice of intent to file the lien;  
20 amending s. 720.305, F.S.; deleting notification  
21 requirements for the appointment of a receiver under  
22 specified circumstances for matters relating to  
23 homeowners' associations; providing an effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27 Section 1. Section 718.1124, Florida Statutes, is amended  
28 to read:

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29           718.1124 Failure to fill vacancies on board of  
30 administration sufficient to constitute a quorum; appointment of  
31 receiver upon petition of unit owner.--

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

39  
40                           NOTICE OF INTENT TO APPLY FOR RECEIVERSHIP

41  
42           YOU ARE HEREBY NOTIFIED that the undersigned owner of a  
43 condominium unit in (name of condominium) intends to  
44 file a petition in the circuit court for appointment of  
45 a receiver to manage the affairs of the association on  
46 the grounds that the association has failed to fill  
47 vacancies on the board of administration sufficient to  
48 constitute a quorum. This petition will not be filed if  
49 the vacancies are filled within 30 days after the date  
50 on which this notice was sent or posted, whichever is  
51 later. If a receiver is appointed, the receiver shall  
52 have all of the powers of the board and shall be  
53 entitled to receive a salary and reimbursement of all  
54 costs and attorney's fees payable from association  
55 funds.

56  
57           (name and address of petitioning unit owner)

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58  
59       (2) The notice required by subsection (1) must be provided  
60 by ~~At least 30 days prior to applying to the circuit court,~~ the  
61 unit owner ~~shall mail~~ to the association by certified mail or  
62 personal delivery, must be posted and post in a conspicuous place  
63 on the condominium property, and must be provided to every unit  
64 owner of the association by certified mail or personal delivery.  
65 The a notice must be posted and mailed or delivered at least 30  
66 days prior to the filing of a petition seeking receivership.  
67 Notice by mail to a unit owner shall be sent to the address used  
68 by the county property appraiser for notice to the unit owner  
69 ~~describing the intended action, giving the association the~~  
70 ~~opportunity to fill the vacancies.~~

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

75       (4) If a receiver is appointed, all unit owners shall be  
76 given written notice of such appointment as provided in s.  
77 718.127.

78       (5) The association shall be responsible for the salary of  
79 the receiver, court costs, and attorney's fees. The receiver  
80 shall have all powers and duties of a duly constituted board of  
81 administration and shall serve until the association fills  
82 vacancies on the board sufficient to constitute a quorum and the  
83 court relieves the receiver of the appointment.

84       Section 2. Paragraph (a) of subsection (7) of section  
85 718.117, Florida Statutes, is amended to read:

86       718.117 Termination of condominium.--

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87 (7) NATURAL DISASTERS.--

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

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

106 718.121 Liens.--

107 (4) Except as otherwise provided in this chapter, no lien  
108 may be filed against a condominium unit until 30 days after the  
109 date on which a notice of intent to file a lien has been served  
110 on the owner of the condominium unit by certified mail or by  
111 personal service in the manner authorized by chapter 48 and the  
112 Florida Rules of Civil Procedure.

113 Section 4. Section 718.127, Florida Statutes, is created to  
114 read:

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115        718.127 Receivership notification.--Upon the appointment of  
116 a receiver by a court for any reason relating to a condominium  
117 association, the court shall direct the receiver to provide to  
118 all unit owners written notice of his or her appointment as  
119 receiver. Such notice shall be mailed or delivered within 10 days  
120 after the appointment. Notice by mail to a unit owner shall be  
121 sent to the address used by the county property appraiser for  
122 notice to the unit owner.

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

125        719.108 Rents and assessments; liability; lien and  
126 priority; interest; collection; cooperative ownership.--

127        (4) The association shall have a lien on each cooperative  
128 parcel for any unpaid rents and assessments, plus interest,  
129 against the unit owner of the cooperative parcel. If authorized  
130 by the cooperative documents, said lien shall also secure  
131 reasonable attorney's fees incurred by the association incident  
132 to the collection of the rents and assessments or enforcement of  
133 such lien. The lien is effective from and after the recording of  
134 a claim of lien in the public records in the county in which the  
135 cooperative parcel is located which states the description of the  
136 cooperative parcel, the name of the unit owner, the amount due,  
137 and the due dates. The lien shall expire if a claim of lien is  
138 not filed within 1 year after the date the assessment was due,  
139 and no such lien shall continue for a longer period than 1 year  
140 after the claim of lien has been recorded unless, within that  
141 time, an action to enforce the lien is commenced in a court of  
142 competent jurisdiction. No lien may be filed against a  
143 cooperative parcel until 30 days after the date on which a notice

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144 of intent to file a lien has been served on the unit owner of the  
145 cooperative parcel by certified mail or by personal service in  
146 the manner authorized by chapter 48 and the Florida Rules of  
147 Civil Procedure.

148 Section 6. Section 719.1124, Florida Statutes, is created  
149 to read:

150 719.1124 Failure to fill vacancies on board of  
151 administration sufficient to constitute a quorum; appointment of  
152 receiver upon petition of unit owner.--

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

160  
161 NOTICE OF INTENT TO APPLY FOR RECEIVERSHIP

162  
163 YOU ARE HEREBY NOTIFIED that the undersigned owner of a  
164 unit in (name of cooperative) intends to file a  
165 petition in the circuit court for appointment of a  
166 receiver to manage the affairs of the association on  
167 the grounds that the association has failed to fill  
168 vacancies on the board of administration sufficient to  
169 constitute a quorum. This petition will not be filed if  
170 the vacancies are filled within 30 days after the date  
171 on which this notice was sent or posted, whichever is  
172 later. If a receiver is appointed, the receiver shall

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173 have all of the powers of the board and shall be  
174 entitled to receive a salary and reimbursement of all  
175 costs and attorney's fees payable from association  
176 funds.

177  
178 (name and address of petitioning unit owner)

179  
180 (2) The notice required by subsection (1) must be provided  
181 by the unit owner to the association by certified mail or  
182 personal delivery, must be posted in a conspicuous place on the  
183 cooperative property, and must be provided to every unit owner of  
184 the association by certified mail or personal delivery. The  
185 notice must be posted and mailed or delivered at least 30 days  
186 prior to the filing of a petition seeking receivership. Notice by  
187 mail to a unit owner shall be sent to the address used by the  
188 county property appraiser for notice to the unit owner.

189 (3) If the association fails to fill the vacancies within  
190 30 days after the notice required by subsection (1) is posted and  
191 mailed or delivered, the unit owner may proceed with the  
192 petition.

193 (4) If a receiver is appointed, all unit owners shall be  
194 given written notice of such appointment as provided in s.  
195 719.127.

196 (5) The association shall be responsible for the salary of  
197 the receiver, court costs, and attorney's fees. The receiver  
198 shall have all powers and duties of a duly constituted board of  
199 administration and shall serve until the association fills  
200 vacancies on the board sufficient to constitute a quorum and the  
201 court relieves the receiver of the appointment.

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202 Section 7. Section 719.127, Florida Statutes, is created to  
203 read:

204 719.127 Receivership notification.--Upon the appointment of  
205 a receiver by a court for any reason relating to a cooperative  
206 association, the court shall direct the receiver to provide to  
207 all unit owners written notice of his or her appointment as  
208 receiver. Such notice shall be mailed or delivered within 10 days  
209 after the appointment. Notice by mail to a unit owner shall be  
210 sent to the address used by the county property appraiser for  
211 notice to the unit owner.

212 Section 8. Section 720.305, Florida Statutes, is amended to  
213 read:

214 720.305 Obligations of members; remedies at law or in  
215 equity; levy of fines and suspension of use rights; ~~failure to~~  
216 ~~fill sufficient number of vacancies on board of directors to~~  
217 ~~constitute a quorum; appointment of receiver upon petition of any~~  
218 ~~member.--~~

219 (1) Each member and the member's tenants, guests, and  
220 invitees, and each association, are governed by, and must comply  
221 with, this chapter, the governing documents of the community, and  
222 the rules of the association. Actions at law or in equity, or  
223 both, to redress alleged failure or refusal to comply with these  
224 provisions may be brought by the association or by any member  
225 against:

226 (a) The association;

227 (b) A member;

228 (c) Any director or officer of an association who willfully  
229 and knowingly fails to comply with these provisions; and



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230 (d) Any tenants, guests, or invitees occupying a parcel or  
231 using the common areas.

232  
233 The prevailing party in any such litigation is entitled to  
234 recover reasonable attorney's fees and costs. A member prevailing  
235 in an action between the association and the member under this  
236 section, in addition to recovering his or her reasonable  
237 attorney's fees, may recover additional amounts as determined by  
238 the court to be necessary to reimburse the member for his or her  
239 share of assessments levied by the association to fund its  
240 expenses of the litigation. This relief does not exclude other  
241 remedies provided by law. This section does not deprive any  
242 person of any other available right or remedy.

243 (2) If the governing documents so provide, an association  
244 may suspend, for a reasonable period of time, the rights of a  
245 member or a member's tenants, guests, or invitees, or both, to  
246 use common areas and facilities and may levy reasonable fines,  
247 not to exceed \$100 per violation, against any member or any  
248 tenant, guest, or invitee. A fine may be levied on the basis of  
249 each day of a continuing violation, with a single notice and  
250 opportunity for hearing, except that no such fine shall exceed  
251 \$1,000 in the aggregate unless otherwise provided in the  
252 governing documents. A fine shall not become a lien against a  
253 parcel. In any action to recover a fine, the prevailing party is  
254 entitled to collect its reasonable attorney's fees and costs from  
255 the nonprevailing party as determined by the court.

256 (a) A fine or suspension may not be imposed without notice  
257 of at least 14 days to the person sought to be fined or suspended  
258 and an opportunity for a hearing before a committee of at least

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259 three members appointed by the board who are not officers,  
260 directors, or employees of the association, or the spouse,  
261 parent, child, brother, or sister of an officer, director, or  
262 employee. If the committee, by majority vote, does not approve a  
263 proposed fine or suspension, it may not be imposed.

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

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

272 (3) If the governing documents so provide, an association  
273 may suspend the voting rights of a member for the nonpayment of  
274 regular annual assessments that are delinquent in excess of 90  
275 days.

276 ~~(4) If an association fails to fill vacancies on the board  
277 of directors sufficient to constitute a quorum in accordance with  
278 the bylaws, any member may apply to the circuit court that has  
279 jurisdiction over the community served by the association for the  
280 appointment of a receiver to manage the affairs of the  
281 association. At least 30 days before applying to the circuit  
282 court, the member shall mail to the association, by certified or  
283 registered mail, and post, in a conspicuous place on the property  
284 of the community served by the association, a notice describing  
285 the intended action, giving the association 30 days to fill the  
286 vacancies. If during such time the association fails to fill a  
287 sufficient number of vacancies so that a quorum can be assembled,~~

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288 ~~the member may proceed with the petition. If a receiver is~~  
289 ~~appointed, the homeowners' association shall be responsible for~~  
290 ~~the salary of the receiver, court costs, attorney's fees, and all~~  
291 ~~other expenses of the receivership. The receiver has all the~~  
292 ~~powers and duties of a duly constituted board of directors and~~  
293 ~~shall serve until the association fills a sufficient number of~~  
294 ~~vacancies on the board so that a quorum can be assembled.~~

295 Section 9. Section 720.3053, Florida Statutes, is created  
296 to read:

297 720.3053 Failure to fill vacancies on board of directors  
298 sufficient to constitute a quorum; appointment of receiver upon  
299 petition of member.--

300 (1) If an association fails to fill vacancies on the board  
301 of directors sufficient to constitute a quorum in accordance with  
302 the bylaws, any member may give notice of the member's intent to  
303 apply to the circuit court within whose jurisdiction the  
304 association lies for the appointment of a receiver to manage the  
305 affairs of the association. The form of the notice shall be as  
306 follows:

307  
308 NOTICE OF INTENT TO APPLY FOR RECEIVERSHIP

309  
310 YOU ARE HEREBY NOTIFIED that the undersigned member of  
311 (name of homeowners' association) intends to file a  
312 petition in the circuit court for appointment of a  
313 receiver to manage the affairs of the association on  
314 the grounds that the association has failed to fill  
315 vacancies on the board of directors sufficient to  
316 constitute a quorum. This petition will not be filed if

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317 the vacancies are filled within 30 days after the date  
318 on which this notice was sent or posted, whichever is  
319 later. If a receiver is appointed, the receiver shall  
320 have all of the powers of the board and shall be  
321 entitled to receive a salary and reimbursement of all  
322 costs and attorney's fees payable from association  
323 funds.

324  
325 (name and address of petitioning member)  
326

327 (2) The notice required by subsection (1) must be provided  
328 by the member to the association by certified mail or personal  
329 delivery, must be posted in a conspicuous place within the  
330 homeowners' association, and must be provided to every member of  
331 the association by certified mail or personal delivery. The  
332 notice must be posted and mailed or delivered at least 30 days  
333 prior to the filing of a petition seeking receivership. Notice by  
334 mail to a member shall be sent to the address used by the county  
335 property appraiser for notice to the member.

336 (3) If the association fails to fill the vacancies within  
337 30 days after the notice required by subsection (1) is posted and  
338 mailed or delivered, the member may proceed with the petition.

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

341 (5) The association shall be responsible for the salary of  
342 the receiver, court costs, and attorney's fees. The receiver  
343 shall have all powers and duties of a duly constituted board of  
344 directors and shall serve until the association fills vacancies

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345 on the board sufficient to constitute a quorum and the court  
346 relieves the receiver of the appointment.

347 Section 10. Section 720.313, Florida Statutes, is created  
348 to read:

349 720.313 Receivership notification.--Upon the appointment of  
350 a receiver by a court for any reason relating to a homeowners'  
351 association, the court shall direct the receiver to provide to  
352 all members written notice of his or her appointment as receiver.  
353 Such notice shall be mailed or delivered within 10 days after the  
354 appointment. Notice by mail to a member shall be sent to the  
355 address used by the county property appraiser for notice to the  
356 owner of the property.

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