

By the Committee on Community Affairs; and Senator Margolis

578-08378-08

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

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29 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 and reimbursement of all

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58 costs and attorney's fees payable from association  
59 funds.

60  
61 (name and address of petitioning unit owner)

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

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

79 (4) If a receiver is appointed, all unit owners shall be  
80 given written notice of such appointment as provided in s.  
81 718.127.

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

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

88 Section 2. Paragraph (a) of subsection (7) of section  
89 718.117, Florida Statutes, is amended to read:

90 718.117 Termination of condominium.--

91 (7) NATURAL DISASTERS.--

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

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

110 718.121 Liens.--

111 (4) Except as otherwise provided in this chapter, no lien  
112 may be filed by the association against a condominium unit until  
113 30 days after the date on which a notice of intent to file a lien  
114 has been delivered to the owner by registered or certified mail,

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115 return receipt requested, and by first-class United States mail  
116 to the owner at his or her last address as reflected in the  
117 records of the association, if the address is within the United  
118 States, and delivered to the owner at the address of the unit if  
119 the owner's address as reflected in the records of the  
120 association is not the unit address. If the address reflected in  
121 the records is outside the United States, sending the notice to  
122 such address and to the unit address by first-class United States  
123 mail constitutes sufficient delivery. Delivery of the notice  
124 shall be deemed complete upon mailing as required by this  
125 subsection.

126 Section 4. Section 718.127, Florida Statutes, is created to  
127 read:

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

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

138 719.108 Rents and assessments; liability; lien and  
139 priority; interest; collection; cooperative ownership.--

140 (4) The association shall have a lien on each cooperative  
141 parcel for any unpaid rents and assessments, plus interest,  
142 against the unit owner of the cooperative parcel. If authorized  
143 by the cooperative documents, said lien shall also secure

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

161 Section 6. Section 719.1124, Florida Statutes, is created  
162 to read:

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

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

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173  
174                   NOTICE OF INTENT TO APPLY FOR RECEIVERSHIP

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

190  
191           (name and address of petitioning unit owner)

192  
193           (2) The notice required by subsection (1) must be provided  
194           by the unit owner to the association by certified mail or  
195           personal delivery, must be posted in a conspicuous place on the  
196           cooperative property, and must be provided to every unit owner of  
197           the association by certified mail or personal delivery. The  
198           notice must be posted and mailed or delivered at least 30 days  
199           prior to the filing of a petition seeking receivership. Notice by  
200           mail to a unit owner shall be sent to the address used by the  
201           county property appraiser for notice to the unit owner.

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

206       (4) If a receiver is appointed, all unit owners shall be  
207 given written notice of such appointment as provided in s.  
208 719.127.

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

215       Section 7. Section 719.127, Florida Statutes, is created to  
216 read:

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

225       Section 8. Section 720.305, Florida Statutes, is amended to  
226 read:

227       720.305 Obligations of members; remedies at law or in  
228 equity; levy of fines and suspension of use rights; ~~failure to~~  
229 ~~fill sufficient number of vacancies on board of directors to~~



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230 ~~constitute a quorum; appointment of receiver upon petition of any~~  
231 ~~member.--~~

232 (1) Each member and the member's tenants, guests, and  
233 invitees, and each association, are governed by, and must comply  
234 with, this chapter, the governing documents of the community, and  
235 the rules of the association. Actions at law or in equity, or  
236 both, to redress alleged failure or refusal to comply with these  
237 provisions may be brought by the association or by any member  
238 against:

239 (a) The association;

240 (b) A member;

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

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

245  
246 The prevailing party in any such litigation is entitled to  
247 recover reasonable attorney's fees and costs. A member prevailing  
248 in an action between the association and the member under this  
249 section, in addition to recovering his or her reasonable  
250 attorney's fees, may recover additional amounts as determined by  
251 the court to be necessary to reimburse the member for his or her  
252 share of assessments levied by the association to fund its  
253 expenses of the litigation. This relief does not exclude other  
254 remedies provided by law. This section does not deprive any  
255 person of any other available right or remedy.

256 (2) If the governing documents so provide, an association  
257 may suspend, for a reasonable period of time, the rights of a  
258 member or a member's tenants, guests, or invitees, or both, to

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259 use common areas and facilities and may levy reasonable fines,  
260 not to exceed \$100 per violation, against any member or any  
261 tenant, guest, or invitee. A fine may be levied on the basis of  
262 each day of a continuing violation, with a single notice and  
263 opportunity for hearing, except that no such fine shall exceed  
264 \$1,000 in the aggregate unless otherwise provided in the  
265 governing documents. A fine shall not become a lien against a  
266 parcel. In any action to recover a fine, the prevailing party is  
267 entitled to collect its reasonable attorney's fees and costs from  
268 the nonprevailing party as determined by the court.

269 (a) A fine or suspension may not be imposed without notice  
270 of at least 14 days to the person sought to be fined or suspended  
271 and an opportunity for a hearing before a committee of at least  
272 three members appointed by the board who are not officers,  
273 directors, or employees of the association, or the spouse,  
274 parent, child, brother, or sister of an officer, director, or  
275 employee. If the committee, by majority vote, does not approve a  
276 proposed fine or suspension, it may not be imposed.

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

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

285 (3) If the governing documents so provide, an association  
286 may suspend the voting rights of a member for the nonpayment of

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287 regular annual assessments that are delinquent in excess of 90  
288 days.

289 ~~(4) If an association fails to fill vacancies on the board  
290 of directors sufficient to constitute a quorum in accordance with  
291 the bylaws, any member may apply to the circuit court that has  
292 jurisdiction over the community served by the association for the  
293 appointment of a receiver to manage the affairs of the  
294 association. At least 30 days before applying to the circuit  
295 court, the member shall mail to the association, by certified or  
296 registered mail, and post, in a conspicuous place on the property  
297 of the community served by the association, a notice describing  
298 the intended action, giving the association 30 days to fill the  
299 vacancies. If during such time the association fails to fill a  
300 sufficient number of vacancies so that a quorum can be assembled,  
301 the member may proceed with the petition. If a receiver is  
302 appointed, the homeowners' association shall be responsible for  
303 the salary of the receiver, court costs, attorney's fees, and all  
304 other expenses of the receivership. The receiver has all the  
305 powers and duties of a duly constituted board of directors and  
306 shall serve until the association fills a sufficient number of  
307 vacancies on the board so that a quorum can be assembled.~~

308 Section 9. Section 720.3053, Florida Statutes, is created  
309 to read:

310 720.3053 Failure to fill vacancies on board of directors  
311 sufficient to constitute a quorum; appointment of receiver upon  
312 petition of member.--

313 (1) If an association fails to fill vacancies on the board  
314 of directors sufficient to constitute a quorum in accordance with  
315 the bylaws, any member may give notice of the member's intent to

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316 apply to the circuit court within whose jurisdiction the  
317 association lies for the appointment of a receiver to manage the  
318 affairs of the association. The form of the notice shall be as  
319 follows:

320  
321 NOTICE OF INTENT TO APPLY FOR RECEIVERSHIP

322  
323 YOU ARE HEREBY NOTIFIED that the undersigned member of  
324 (name of homeowners' association) intends to file a  
325 petition in the circuit court for appointment of a  
326 receiver to manage the affairs of the association on  
327 the grounds that the association has failed to fill  
328 vacancies on the board of directors sufficient to  
329 constitute a quorum. This petition will not be filed if  
330 the vacancies are filled within 30 days after the date  
331 on which this notice was sent or posted, whichever is  
332 later. If a receiver is appointed, the receiver shall  
333 have all of the powers of the board and shall be  
334 entitled to receive a salary and reimbursement of all  
335 costs and attorney's fees payable from association  
336 funds.

337  
338 (name and address of petitioning member)

339  
340 (2) The notice required by subsection (1) must be provided  
341 by the member to the association by certified mail or personal  
342 delivery, must be posted in a conspicuous place within the  
343 homeowners' association, and must be provided to every member of  
344 the association by certified mail or personal delivery. The

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345 notice must be posted and mailed or delivered at least 30 days  
346 prior to the filing of a petition seeking receivership. Notice by  
347 mail to a member shall be sent to the address used by the county  
348 property appraiser for notice to the member.

349 (3) If the association fails to fill the vacancies within  
350 30 days after the notice required by subsection (1) is posted and  
351 mailed or delivered, the member may proceed with the petition.

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

354 (5) The association shall be responsible for the salary of  
355 the receiver, court costs, and attorney's fees. The receiver  
356 shall have all powers and duties of a duly constituted board of  
357 directors and shall serve until the association fills vacancies  
358 on the board sufficient to constitute a quorum and the court  
359 relieves the receiver of the appointment.

360 Section 10. Section 720.313, Florida Statutes, is created  
361 to read:

362 720.313 Receivership notification.--Upon the appointment of  
363 a receiver by a court for any reason relating to a homeowners'  
364 association, the court shall direct the receiver to provide to  
365 all members written notice of his or her appointment as receiver.  
366 Such notice shall be mailed or delivered within 10 days after the  
367 appointment. Notice by mail to a member shall be sent to the  
368 address used by the county property appraiser for notice to the  
369 owner of the property.

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