

1 A bill to be entitled
2 An act relating to community associations; amending s.
3 20.165, F.S.; providing powers for employees of the
4 Division of Florida Condominiums, Timeshares, and Mobile
5 Homes; requiring each employee serving as a law
6 enforcement officer for the division to meet the
7 qualifications of a law enforcement officer set forth in
8 ch. 943, F.S., for employment or appointment; requiring
9 each such employee to be certified as a law enforcement
10 officer by the Department of Law Enforcement; providing
11 the law enforcement officer with certain powers,
12 authority, jurisdiction, and responsibilities; amending s.
13 468.436, F.S.; revising a ground for disciplinary action
14 relating to misconduct or negligence; requiring the
15 Department of Business and Professional Regulation to
16 enter an order permanently revoking certain community
17 association manager licenses; creating s. 627.714, F.S.;
18 requiring coverage under a condominium unit owner's
19 residential property policy to include a minimum amount of
20 loss assessment coverage; providing coverage requirements;
21 requiring the policy to state that such coverage is excess
22 coverage; amending s. 718.111, F.S.; requiring that
23 association access to a unit must be by two persons, one
24 of whom must be a board member or manager or employee of
25 the association; providing an exception for emergencies;
26 requiring coverage for certain personal property to be the
27 responsibility of the condominium unit owner; revising
28 board meeting notice requirements; requiring insurance

29 | policies issued or renewed on or after a specified date to
 30 | conform to specified loss assessment coverage
 31 | requirements; revising and deleting provisions relating to
 32 | hazard or casualty insurance coverage requirements, to
 33 | conform; deleting a provision requiring the condominium
 34 | association to be an additional named insured and loss
 35 | payee on all casualty insurance policies issued to unit
 36 | owners in the condominium operated by the association;
 37 | providing requirements for the selection of condominium
 38 | association board meeting times and locations; providing
 39 | restrictions on the times set for certain meetings;
 40 | prohibiting certain expenditures and contributions by a
 41 | condominium association; providing liability; amending s.
 42 | 718.112, F.S.; revising notice requirements for board of
 43 | administration meetings; revising location requirements
 44 | for the annual meeting of unit owners; revising terms of
 45 | board members; revising requirements for the reappointment
 46 | of certain board members; revising election notice
 47 | requirements; providing requirements for the amendment of
 48 | association bylaws; providing for the removal of certain
 49 | directors and officers; providing qualifications for
 50 | service on the board of directors; providing requirements
 51 | for the borrowing of funds or committing to a line of
 52 | credit by the board; amending s. 718.113, F.S.;
 53 | authorizing the association to install code-compliant
 54 | impact glass as hurricane protection in certain areas;
 55 | amending s. 718.116, F.S.; revising provisions limiting
 56 | the liability of a first mortgagee and its successors and

57 | assignees acquiring title to a unit by foreclosure or by
58 | deed in lieu of foreclosure for certain unpaid
59 | assessments; deleting an exemption from liability for
60 | certain persons acquiring title to a condominium as a
61 | result of the foreclosure of the mortgage or by deed in
62 | lieu of the foreclosure of the mortgage; providing
63 | procedures for a mortgagee filing a foreclosure case on a
64 | mortgage secured by a condominium unit; requiring
65 | mortgagees filing for foreclosure to make certain payments
66 | to the association; amending s. 718.1255, F.S.; requiring
67 | expedited resolution of election and recall arbitrations;
68 | establishing a fee; providing notice and hearing
69 | requirements; requiring the board to produce all original
70 | ballots and election materials at arbitration; providing
71 | for removal of board members who fail to appear with such
72 | ballots and election materials; requiring an immediate
73 | oral ruling and a conforming written opinion; providing
74 | for enforcement; prohibiting certain expenses upon receipt
75 | of a notice of arbitration; amending s. 718.1265, F.S.;
76 | providing conditions under which the association may use
77 | certain emergency powers; amending s. 718.501, F.S.;
78 | revising condominium matters over which the division has
79 | jurisdiction; revising and providing powers of the
80 | division; requiring the division to create a specified
81 | booklet for association directors; amending s. 718.5012,
82 | F.S.; authorizing the Office of the Condominium Ombudsman
83 | to assist in the resolution of certain disputes; amending
84 | s. 718.50151, F.S.; redesignating the Community

85 Association Living Study Council as the Community
86 Association Study Council; revising council membership;
87 amending s. 719.103, F.S.; revising definitions; changing
88 references from unit owner to shareholder in statutes
89 relating to cooperatives; amending s. 719.104, F.S.;
90 requiring that association access to a unit must be by two
91 persons, one of whom must be a board member or manager or
92 employee of the association; providing an exception for
93 emergencies; providing civil penalties for violations of
94 accounting records requirements; exempting certain
95 personal information from unit owner records requests;
96 providing immunity from liability for certain information
97 provided by associations to prospective purchasers or
98 lienholders under certain circumstances; providing
99 legislative intent; requiring that property insurance be
100 based upon the replacement cost of the property to be
101 insured as determined by an independent insurance
102 appraisal or update of a prior appraisal; requiring that
103 the full insurable value be determined at specified
104 intervals; providing means by which an association may
105 provide adequate property insurance coverage; authorizing
106 an association to consider certain information when
107 determining coverage amounts; providing for coverage by
108 developer-controlled associations; providing that policies
109 may include deductibles as determined by the association's
110 board of directors; providing requirements and guidelines
111 for the establishment of such deductibles; requiring that
112 the amounts of deductibles be set at a meeting of the

113 board; providing requirements for such meeting; requiring
114 that an association controlled by shareholders operating
115 as a residential cooperative use its best efforts to
116 obtain and maintain adequate insurance to protect the
117 association and property under its supervision or control;
118 authorizing an association to obtain and maintain
119 liability insurance for directors and officers, insurance
120 for the benefit of association employees, and flood
121 insurance for common elements, association property, and
122 units; requiring that every property insurance policy
123 issued or renewed on or after a specified date for the
124 purpose of protecting the cooperative provide certain
125 coverage; requiring that such policies contain certain
126 provisions; providing responsibilities of the shareholder
127 and association with regard to reconstruction work and
128 associated costs after a casualty loss; requiring the
129 association to maintain certain insurance or fidelity
130 bonding for persons who control or disburse funds of the
131 association; providing requirements with respect to
132 financial statements and reports; providing that the
133 operation of the cooperative shall be by the association;
134 providing that shareholders shall be members of the
135 association; providing legislative intent; providing that
136 a director of the association who abstains from voting on
137 any action taken on any corporate matter shall be presumed
138 to have taken no position with regard to the action;
139 providing duties of officers, directors, and agents of a
140 cooperative association and liability for monetary damages

141 under certain circumstances; providing that the
142 association may contract, sue, or be sued with respect to
143 the exercise or nonexercise of its powers; providing
144 requirements for the borrowing of funds or committing to a
145 line of credit by the board; providing powers of the
146 association with respect to title to property and purchase
147 of units; providing requirements for the selection of
148 cooperative association board of directors meeting times
149 and locations; providing restrictions on the times set for
150 certain meetings; prohibiting certain expenditures and
151 contributions by the cooperative association; providing
152 liability; amending s. 719.106, F.S.; requiring certain
153 items to be placed on the agenda of board meetings;
154 revising notice requirements for board meetings; providing
155 requirements for shareholder meetings; providing terms of
156 office and election requirements for the board of
157 directors; providing criteria for the amendment of the
158 bylaws; providing eligibility to vote on certain questions
159 involving reserve funds; requiring proxy questions
160 relating to reserves to contain a specified statement;
161 requiring the bylaws to contain certain provisions;
162 requiring that directors and officers who are delinquent
163 in certain payments owed in excess of certain periods of
164 time be deemed to have abandoned their offices; requiring
165 that directors and officers charged with certain offenses
166 involving an association's funds or property be suspended
167 from office pending resolution of the charge; providing
168 for the reinstatement of such directors and officers under

169 certain circumstances; providing qualifications for
170 directors; providing requirements for the borrowing of
171 funds or committing to a line of credit by the board;
172 repealing s. 719.1064, F.S., relating to the failure to
173 fill vacancies on board of administration and the
174 appointment of a receiver upon petition of a shareholder;
175 amending s. 719.107, F.S.; providing the expense of
176 installation, replacement, operation, repair, and
177 maintenance of hurricane shutters or other hurricane
178 protection shall constitute either a common expense or
179 shall be charged individually to the shareholders under
180 certain conditions; amending s. 719.108, F.S.; limiting
181 the liability of a first mortgagee and its successor and
182 assignees acquiring title to a unit by foreclosure or by
183 deed in lieu of foreclosure for certain unpaid
184 assessments; requiring mortgagees filing for foreclosure
185 to make certain payments to the association; providing a
186 statement of clarification and applicability; providing a
187 definition; providing grounds for disapproval of the
188 proposed lease of a unit by an association; providing lien
189 requirements; providing for the extension of certain
190 liens; providing lien notice and filing requirements;
191 providing foreclosure requirements; providing the
192 association with the power to purchase a cooperative unit
193 at a foreclosure sale; requiring the association to
194 provide a certificate of assessment under certain
195 conditions; providing for the establishment of fees for
196 the preparation of such certificates; providing for the

197 refund of certain fees; authorizing the association to
198 demand payment of future assessments under certain
199 circumstances; creating s. 719.113, F.S.; providing that
200 maintenance of common areas is the responsibility of the
201 association; providing that the cooperative documents may
202 include reference that the association provide certain
203 maintenance for the condominium; providing that there
204 shall be no material alteration or substantial additions
205 to the common areas or to real property which is
206 association property; providing for protection of the
207 common areas; allowing shareholders to display a United
208 States flag as well as other specified flags on designated
209 days and patriotic holidays; requiring the board to adopt
210 hurricane shutter specifications; authorizing the board to
211 install certain hurricane protection; prohibiting the
212 board from installing certain hurricane shutters or other
213 hurricane protection under certain circumstances;
214 providing for the maintenance, repair, and replacement of
215 hurricane shutters or other hurricane protection;
216 authorizing the board to operate hurricane shutters
217 without shareholder permission under certain
218 circumstances; prohibiting the board from refusing to
219 approve the installation or replacement of hurricane
220 shutters under certain conditions; requiring that the
221 board inspect certain buildings and issue a report under
222 certain conditions; providing an exception; prohibiting
223 the board from refusing a request for reasonable
224 accommodation for the attachment to a unit of religious

225 | objects meeting certain size specifications; authorizing
226 | the board to install solar collectors, clotheslines, or
227 | other energy-efficient devices upon or within common areas
228 | or association property; creating s. 719.117, F.S. ;
229 | providing legislative findings; providing provisions
230 | relating to the termination of the cooperative form of
231 | ownership of a property due to economic waste or
232 | impossibility or optional termination; providing grounds
233 | for termination; providing an exemption; providing that
234 | the approval of a plan of termination by certain mortgage
235 | lienholders is not required under certain conditions;
236 | providing powers and duties of the board relating to the
237 | plan of termination; providing requirements following
238 | natural disasters; providing reporting requirements;
239 | providing requirements for a plan of termination;
240 | providing for the allocation of proceeds from the sale of
241 | cooperative property; providing powers and duties of a
242 | termination trustee; providing notice requirements;
243 | providing a procedure for contesting a plan of
244 | termination; providing for recovery of attorney's fees and
245 | costs; providing rules for the distribution of property
246 | and sale proceeds; providing for the association's status
247 | following termination; allowing the creation of another
248 | cooperative by the trustee; creating s. 719.1224, F.S. ;
249 | prohibiting strategic lawsuits against public
250 | participation; providing legislative findings and intent;
251 | prohibiting a governmental entity, business organization,
252 | or individual from filing certain lawsuits made upon

253 specified bases against a shareholder; providing rights of
254 a shareholder who has been served with such a lawsuit;
255 providing procedures for the resolution of certain claims;
256 providing for the award of damages and attorney's fees;
257 prohibiting associations from expending association funds
258 in prosecuting such a suit against a shareholder; amending
259 s. 719.1255, F.S.; requiring the division to provide
260 alternative dispute resolution for certain matters;
261 creating s. 719.1265, F.S.; authorizing an association to
262 exercise certain powers in instances involving damage
263 caused by an event for which a state of emergency has been
264 declared; limiting the applicability of such powers;
265 amending s. 719.301, F.S.; providing circumstances under
266 which shareholders other than a developer may elect not
267 less than a majority of the members of the board;
268 requiring a turnover inspection report; requiring that the
269 report contain certain information; creating s. 719.3025,
270 F.S.; requiring written contracts for the operation,
271 maintenance, or management of a cooperative association or
272 cooperative property; providing contract requirements;
273 authorizing the association to procure outside services
274 under certain circumstances; providing that services or
275 obligations not stated on the face of the contract shall
276 be unenforceable; providing applicability; amending s.
277 719.3026, F.S.; revising a provision authorizing certain
278 associations to opt out of provisions relating to
279 contracts for products and services; removing provisions
280 exempting contracts executed before a specified date from

281 certain competitive bid requirements; providing
282 requirements for any contract or transaction between an
283 association and one or more of its directors or a
284 specified other entity in which one or more of its
285 directors are directors or officers or have a financial
286 interest; amending s. 719.303, F.S.; providing that
287 hearings regarding noncompliance with a declaration be
288 held before certain persons; amending s. 719.501, F.S.;;
289 providing authority and responsibilities of the division;
290 providing for enforcement actions brought by the division
291 in its own name; providing for the imposition of penalties
292 by the division; requiring that the division issue a
293 subpoena requiring production of certain requested records
294 under certain circumstances; providing for the issuance of
295 notice of a declaratory statement with respect to
296 documents governing a cooperative; deleting requirement
297 that the division adopt certain accounting principles;
298 requiring that the division provide training and
299 educational programs for association board members and
300 shareholders; authorizing the division to include certain
301 training components, review or approve training and
302 educational programs offered by providers, and maintain a
303 list of approved programs and providers; requiring the
304 division to develop a program to certify both volunteer
305 and paid mediators; providing responsibilities of the
306 division with regard to such mediators; requiring that
307 certain individuals cooperate with the division in any
308 investigation conducted by the division; requiring the

309 | division to cooperate with similar agencies in other
310 | jurisdictions to establish certain procedures, standards,
311 | and forms; specifying what constitutes completeness of
312 | notice to developer; authorizing the division to issue a
313 | notice to show cause; requiring an association to pay any
314 | penalty due to the division before having standing to
315 | maintain or defend any action in the courts of this state;
316 | creating s. 719.5011, F.S.; requiring the Office of the
317 | Condominium Ombudsman to assist cooperative associations
318 | and cooperative shareholders; amending s. 719.503, F.S.;
319 | providing shareholder disclosure requirements for the sale
320 | of interest in a cooperative association; amending s.
321 | 720.303, F.S.; prohibiting certain expenditures and
322 | contributions by the board of a homeowners' association;
323 | providing liability; providing requirements for the
324 | borrowing of funds or committing to a line of credit by
325 | the board; providing requirements relating to transfer
326 | fees; amending s. 720.304, F.S.; revising requirements
327 | with respect to the display of flags; creating s.
328 | 720.3065, F.S.; providing requirements for the selection
329 | of homeowners' association board of administration meeting
330 | times and locations; providing restrictions on the times
331 | set for certain meetings; amending s. 720.3085, F.S.;
332 | revising provisions relating to the effectiveness and
333 | priority of homeowners' association liens; revising
334 | provisions limiting the liability of a first mortgagee and
335 | its successors and assignees acquiring title to a unit by
336 | foreclosure or by deed in lieu of foreclosure for certain

337 unpaid assessments; requiring mortgagees filing for
 338 foreclosure to make certain payments to the association;
 339 creating s. 720.314, F.S.; providing for parcel owners to
 340 file informational complaints regarding homeowners'
 341 associations and their officers and directors with the
 342 Office of Program Policy Analysis and Government
 343 Accountability; providing for an informational complaint
 344 form and the format of such form; amending s. 721.16,
 345 F.S.; conforming a cross-reference; requiring a study by
 346 the Office of Program Policy Analysis and Government
 347 Accountability for specified purposes; requiring a report
 348 to the Legislature by a specified date; providing an
 349 appropriation; providing an effective date.

350

351 Be It Enacted by the Legislature of the State of Florida:

352

353 Section 1. Subsection (10) is added to section 20.165,
 354 Florida Statutes, to read:

355 20.165 Department of Business and Professional
 356 Regulation.--There is created a Department of Business and
 357 Professional Regulation.

358 (10) (a) All employees authorized by the Division of
 359 Florida Condominiums, Timeshares, and Mobile Homes shall have
 360 access to and shall have the right to examine and inspect the
 361 premises, books, and records of any condominium, cooperative,
 362 timeshare, or mobile home park regulated by the division. Such
 363 employees shall also have access to and shall have the right to
 364 examine and inspect the books and records of any community

365 association manager or firm employed by any condominium,
366 cooperative, timeshare, or mobile home park regulated by the
367 division. The authorized employees shall require of each
368 licensee strict compliance with the laws of this state relating
369 to the transaction of such business or operation.

370 (b) Each employee serving as a law enforcement officer for
371 the division must meet the qualifications for employment or
372 appointment as a law enforcement officer set forth under s.
373 943.13 and must be certified as a law enforcement officer by the
374 Department of Law Enforcement under chapter 943. Upon
375 certification, each law enforcement officer is subject to and
376 has the same authority as provided for law enforcement officers
377 generally in chapter 901 and has statewide jurisdiction. Each
378 officer also has arrest authority as provided for state law
379 enforcement officers in s. 901.15. Each officer possesses the
380 full law enforcement powers granted to other peace officers of
381 this state, including the authority to make arrests, carry
382 firearms, serve court process, and seize contraband and the
383 proceeds of illegal activities.

384 (c) The primary responsibility of each officer appointed
385 under this subsection is to investigate, enforce, and prosecute,
386 throughout the state, violations and violators of part VIII of
387 chapter 468, chapters 718, 719, 721, and 723, and the rules
388 adopted thereunder, as well as other state laws that the
389 division or all state law enforcement officers are specifically
390 authorized to enforce. The secondary responsibility of each
391 officer appointed under this subsection is to enforce all other
392 state laws, provided that the enforcement is incidental to

393 exercising the officer's primary responsibility, and the officer
 394 exercises the powers of a deputy sheriff, only after
 395 consultation or coordination with the appropriate local
 396 sheriff's office or municipal police department or when the
 397 division participates in the Florida Mutual Aid Plan during a
 398 declared state emergency.

399 Section 2. Paragraph (b) of subsection (2) of section
 400 468.436, Florida Statutes, is amended, and subsection (6) is
 401 added to that section, to read:

402 468.436 Disciplinary proceedings.--

403 (2) The following acts constitute grounds for which the
 404 disciplinary actions in subsection (4) may be taken:

405 (b)1. Violation of any provision of this part.

406 2. Violation of any lawful order or rule rendered or
 407 adopted by the department or the council.

408 3. Being convicted of or pleading nolo contendere to a
 409 felony in any court in the United States.

410 4. Obtaining a license or certification or any other
 411 order, ruling, or authorization by means of fraud,
 412 misrepresentation, or concealment of material facts.

413 5. Committing acts of ~~gross~~ misconduct or ~~gross~~ negligence
 414 in connection with the profession.

415 6. Contracting, on behalf of an association, with any
 416 entity in which the licensee has a financial interest that is
 417 not disclosed.

418 (6) Upon the fifth or later finding that a community
 419 association manager is guilty of any of the grounds set forth in
 420 subsection (2), or upon the third or later finding that a

CS/HB 1397

2009

421 community association manager is guilty of a specific ground for
422 which the disciplinary actions set forth in subsection (2) may
423 be taken, the department's discretion under subsection (4) shall
424 not apply and the division shall enter an order permanently
425 revoking the license.

426 Section 3. Section 627.714, Florida Statutes, is created
427 to read:

428 627.714 Residential condominium unit owner coverage; loss
429 assessment coverage required; excess coverage provision
430 required.--For policies issued or renewed on or after July 1,
431 2009, coverage under a condominium unit owner's residential
432 property policy shall include property loss assessment coverage
433 of at least \$2,000 for all assessments made as a result of the
434 same direct loss to the property, regardless of the number of
435 assessments, owned by all members of the association
436 collectively when such loss is of the type of loss covered by
437 the unit owner's residential property insurance policy, to which
438 a deductible of no more than \$250 per direct property loss shall
439 apply. If a deductible was or will be applied to other property
440 loss sustained by the unit owner resulting from the same direct
441 loss to the property, no deductible shall apply to the loss
442 assessment coverage. Every unit owner's residential property
443 policy must contain a provision stating that the coverage
444 afforded by such policy is excess coverage over the amount
445 recoverable under any other policy covering the same property.

446 Section 4. Subsections (5) and (11) and paragraph (b) of
447 subsection (12) of section 718.111, Florida Statutes, are
448 amended, and subsections (15) and (16) are added to that

CS/HB 1397

2009

449 section, to read:

450 718.111 The association.--

451 (5) RIGHT OF ACCESS TO UNITS.--The association has the
452 irrevocable right of access to each unit during reasonable
453 hours, when necessary for the maintenance, repair, or
454 replacement of any common elements or of any portion of a unit
455 to be maintained by the association pursuant to the declaration
456 or as necessary to prevent damage to the common elements or to a
457 unit or units. Except in cases of emergency, the association
458 must give the unit owner advance written notice of not less than
459 24 hours of its intent to access the unit and such access must
460 be by two persons, one of whom must be a member of the board of
461 administration or a manager or employee of the association and
462 one of whom must be an authorized representative of the
463 association. The identity of the authorized representative
464 seeking access to the unit shall be provided to the unit owner
465 prior to entering the unit.

466 (11) INSURANCE.--In order to protect the safety, health,
467 and welfare of the people of the State of Florida and to ensure
468 consistency in the provision of insurance coverage to
469 condominiums and their unit owners, this subsection applies to
470 every residential condominium in the state, regardless of the
471 date of its declaration of condominium. It is the intent of the
472 Legislature to encourage lower or stable insurance premiums for
473 associations described in this subsection.

474 (a) Adequate property hazard insurance, regardless of any
475 requirement in the declaration of condominium for coverage by
476 the association for full insurable value, replacement cost, or

477 similar coverage, shall be based upon the replacement cost of
478 the property to be insured as determined by an independent
479 insurance appraisal or update of a prior appraisal. The full
480 insurable value shall be determined at least once every 36
481 months.

482 1. An association or group of associations may provide
483 adequate property ~~hazard~~ insurance through a self-insurance fund
484 that complies with the requirements of ss. 624.460-624.488.

485 2. The association may also provide adequate property
486 ~~hazard~~ insurance coverage for a group of no fewer than three
487 communities created and operating under this chapter, chapter
488 719, chapter 720, or chapter 721 by obtaining and maintaining
489 for such communities property insurance coverage sufficient to
490 cover an amount equal to the probable maximum loss for the
491 communities for a 250-year windstorm event. Such probable
492 maximum loss must be determined through the use of a competent
493 model that has been accepted by the Florida Commission on
494 Hurricane Loss Projection Methodology. No policy or program
495 providing such coverage shall be issued or renewed after July 1,
496 2008, unless it has been reviewed and approved by the Office of
497 Insurance Regulation. The review and approval shall include
498 approval of the policy and related forms pursuant to ss. 627.410
499 and 627.411, approval of the rates pursuant to s. 627.062, a
500 determination that the loss model approved by the commission was
501 accurately and appropriately applied to the insured structures
502 to determine the 250-year probable maximum loss, and a
503 determination that complete and accurate disclosure of all
504 material provisions is provided to condominium unit owners prior

505 to execution of the agreement by a condominium association.

506 3. When determining the adequate amount of property ~~hazard~~
507 insurance coverage, the association may consider deductibles as
508 determined by this subsection.

509 (b) If an association is a developer-controlled
510 association, the association shall exercise its best efforts to
511 obtain and maintain property insurance as described in paragraph
512 (a). Failure to obtain and maintain adequate property ~~hazard~~
513 insurance during any period of developer control constitutes a
514 breach of fiduciary responsibility by the developer-appointed
515 members of the board of directors of the association, unless the
516 members can show that despite such failure, they have made their
517 best efforts to maintain the required coverage.

518 (c) Policies may include deductibles as determined by the
519 board.

520 1. The deductibles shall be consistent with industry
521 standards and prevailing practice for communities of similar
522 size and age, and having similar construction and facilities in
523 the locale where the condominium property is situated.

524 2. The deductibles may be based upon available funds,
525 including reserve accounts, or predetermined assessment
526 authority at the time the property insurance is obtained.

527 3. The board shall establish the amount of deductibles
528 based upon the level of available funds and predetermined
529 assessment authority at a meeting of the board. Such meeting
530 shall be open to all unit owners in the manner set forth in s.
531 718.112(2)(e). The notice of such meeting must state the
532 proposed deductible and the available funds and the assessment

533 authority relied upon by the board and estimate any potential
 534 assessment amount against each unit, if any. The meeting
 535 described in this paragraph may be held in conjunction with a
 536 meeting to consider the proposed budget or an amendment thereto.

537 (d) An association controlled by unit owners operating as
 538 a residential condominium shall use its best efforts to obtain
 539 and maintain adequate property insurance to protect the
 540 association, the association property, the common elements, and
 541 the condominium property that is required to be insured by the
 542 association pursuant to this subsection.

543 (e) The declaration of condominium as originally recorded,
 544 or as amended pursuant to procedures provided therein, may
 545 provide that condominium property consisting of freestanding
 546 buildings comprised of no more than one building in or on such
 547 unit need not be insured by the association if the declaration
 548 requires the unit owner to obtain adequate property insurance
 549 for the condominium property. An association may also obtain and
 550 maintain liability insurance for directors and officers,
 551 insurance for the benefit of association employees, and flood
 552 insurance for common elements, association property, and units.

553 (f) Every property ~~hazard~~ insurance policy issued or
 554 renewed on or after July ~~January~~ 1, 2009, for the purpose of
 555 protecting the condominium shall provide primary coverage for:

556 1. All portions of the condominium property as originally
 557 installed or replacement of like kind and quality, in accordance
 558 with the original plans and specifications.

559 2. All alterations or additions made to the condominium
 560 property or association property pursuant to s. 718.113(2).

561 3. The coverage shall exclude all personal property within
562 the unit or limited common elements, and floor, wall, and
563 ceiling coverings, electrical fixtures, appliances, water
564 heaters, water filters, built-in cabinets and countertops, air-
565 conditioning and heating equipment that serves a single unit,
566 and window treatments, including curtains, drapes, blinds,
567 hardware, and similar window treatment components, or
568 replacements of any of the foregoing, that are located within
569 the boundaries of the unit and serve only such unit. Such
570 property and any insurance therefor shall be the responsibility
571 of the unit owner.

572 (g) A condominium unit owner's policy issued after July 1,
573 2009, shall conform to the requirements of s. 627.714. Every
574 ~~hazard insurance policy issued or renewed on or after January 1,~~
575 ~~2009, to an individual unit owner must contain a provision~~
576 ~~stating that the coverage afforded by such policy is excess~~
577 ~~coverage over the amount recoverable under any other policy~~
578 ~~covering the same property. Such policies must include special~~
579 ~~assessment coverage of no less than \$2,000 per occurrence. An~~
580 ~~insurance policy issued to an individual unit owner providing~~
581 ~~such coverage does not provide rights of subrogation against the~~
582 ~~condominium association operating the condominium in which such~~
583 ~~individual's unit is located.~~

584 ~~1. All improvements or additions to the condominium~~
585 ~~property that benefit fewer than all unit owners shall be~~
586 ~~insured by the unit owner or owners having the use thereof, or~~
587 ~~may be insured by the association at the cost and expense of the~~
588 ~~unit owners having the use thereof.~~

589 ~~2. The association shall require each owner to provide~~
590 ~~evidence of a currently effective policy of hazard and liability~~
591 ~~insurance upon request, but not more than once per year. Upon~~
592 ~~the failure of an owner to provide a certificate of insurance~~
593 ~~issued by an insurer approved to write such insurance in this~~
594 ~~state within 30 days after the date on which a written request~~
595 ~~is delivered, the association may purchase a policy of insurance~~
596 ~~on behalf of an owner. The cost of such a policy, together with~~
597 ~~reconstruction costs undertaken by the association but which are~~
598 ~~the responsibility of the unit owner, may be collected in the~~
599 ~~manner provided for the collection of assessments in s. 718.116.~~

600 ~~1.3.~~ All reconstruction work after a casualty loss shall
601 be undertaken by the association except as otherwise authorized
602 in this section. A unit owner may undertake reconstruction work
603 on portions of the unit with the prior written consent of the
604 board of administration. However, such work may be conditioned
605 upon the approval of the repair methods, the qualifications of
606 the proposed contractor, or the contract that is used for that
607 purpose. A unit owner shall obtain all required governmental
608 permits and approvals prior to commencing reconstruction.

609 ~~2.4.~~ Unit owners are responsible for the cost of
610 reconstruction of any portions of the condominium property for
611 which the association does not ~~unit owner is required to~~ carry
612 property ~~casualty~~ insurance, and any such reconstruction work
613 undertaken by the association shall be chargeable to the unit
614 owner and enforceable as an assessment pursuant to s. 718.116.
615 ~~The association must be an additional named insured and loss~~
616 ~~payee on all casualty insurance policies issued to unit owners~~

617 ~~in the condominium operated by the association.~~

618 3.5. A multicondominium association may elect, by a
619 majority vote of the collective members of the condominiums
620 operated by the association, to operate such condominiums as a
621 single condominium for purposes of insurance matters, including,
622 but not limited to, the purchase of the property hazard ~~hazard~~
623 insurance required by this section and the apportionment of
624 deductibles and damages in excess of coverage. The election to
625 aggregate the treatment of insurance premiums, deductibles, and
626 excess damages constitutes an amendment to the declaration of
627 all condominiums operated by the association, and the costs of
628 insurance shall be stated in the association budget. The
629 amendments shall be recorded as required by s. 718.110.

630 (h) The association shall maintain insurance or fidelity
631 bonding of all persons who control or disburse funds of the
632 association. The insurance policy or fidelity bond must cover
633 the maximum funds that will be in the custody of the association
634 or its management agent at any one time. As used in this
635 paragraph, the term "persons who control or disburse funds of
636 the association" includes, but is not limited to, those
637 individuals authorized to sign checks on behalf of the
638 association, and the president, secretary, and treasurer of the
639 association. The association shall bear the cost of any such
640 bonding.

641 (i) The association may amend the declaration of
642 condominium without regard to any requirement for approval by
643 mortgagees of amendments affecting insurance requirements for
644 the purpose of conforming the declaration of condominium to the

645 coverage requirements of this subsection.

646 (j) Any portion of the condominium property required to be
647 insured by the association against property ~~casualty~~ loss
648 pursuant to paragraph (f) which is damaged ~~by casualty~~ shall be
649 reconstructed, repaired, or replaced as necessary by the
650 association as a common expense. All property ~~hazard~~ insurance
651 deductibles, uninsured losses, and other damages in excess of
652 property ~~hazard~~ insurance coverage under the property ~~hazard~~
653 insurance policies maintained by the association are a common
654 expense of the condominium, except that:

655 1. A unit owner is responsible for the costs of repair or
656 replacement of any portion of the condominium property not paid
657 by insurance proceeds, if such damage is caused by intentional
658 conduct, negligence, or failure to comply with the terms of the
659 declaration or the rules of the association by a unit owner, the
660 members of his or her family, unit occupants, tenants, guests,
661 or invitees, without compromise of the subrogation rights of any
662 insurer ~~as set forth in paragraph (g)~~.

663 2. The provisions of subparagraph 1. regarding the
664 financial responsibility of a unit owner for the costs of
665 repairing or replacing other portions of the condominium
666 property also apply to the costs of repair or replacement of
667 personal property of other unit owners or the association, as
668 well as other property, whether real or personal, which the unit
669 owners are required to insure ~~under paragraph (g)~~.

670 3. To the extent the cost of repair or reconstruction for
671 which the unit owner is responsible under this paragraph is
672 reimbursed to the association by insurance proceeds, and, to the

CS/HB 1397

2009

673 extent the association has collected the cost of such repair or
674 reconstruction from the unit owner, the association shall
675 reimburse the unit owner ~~without the waiver of any rights of~~
676 ~~subrogation.~~

677 4. The association is not obligated to pay for repair or
678 reconstruction or repairs of property casualty losses as a
679 common expense if the property casualty losses were known or
680 should have been known to a unit owner and were not reported to
681 the association until after the insurance claim of the
682 association for that property casualty was settled or resolved
683 with finality, or denied on the basis that it was untimely
684 filed.

685 (k) An association may, upon the approval of a majority of
686 the total voting interests in the association, opt out of the
687 provisions of paragraph (j) for the allocation of repair or
688 reconstruction expenses and allocate repair or reconstruction
689 expenses in the manner provided in the declaration as originally
690 recorded or as amended. Such vote may be approved by the voting
691 interests of the association without regard to any mortgagee
692 consent requirements.

693 (l) In a multicondominium association that has not
694 consolidated its financial operations under subsection (6), any
695 condominium operated by the association may opt out of the
696 provisions of paragraph (j) with the approval of a majority of
697 the total voting interests in that condominium. Such vote may be
698 approved by the voting interests without regard to any mortgagee
699 consent requirements.

700 (m) Any association or condominium voting to opt out of

701 the guidelines for repair or reconstruction expenses as
 702 described in paragraph (j) must record a notice setting forth
 703 the date of the opt-out vote and the page of the official
 704 records book on which the declaration is recorded. The decision
 705 to opt out is effective upon the date of recording of the notice
 706 in the public records by the association. An association that
 707 has voted to opt out of paragraph (j) may reverse that decision
 708 by the same vote required in paragraphs (k) and (l), and notice
 709 thereof shall be recorded in the official records.

710 (n) The association is not obligated to pay for any
 711 reconstruction or repair expenses due to property ~~casualty~~ loss
 712 to any improvements installed by a current or former owner of
 713 the unit or by the developer if the improvement benefits only
 714 the unit for which it was installed and is not part of the
 715 standard improvements installed by the developer on all units as
 716 part of original construction, whether or not such improvement
 717 is located within the unit. This paragraph does not relieve any
 718 party of its obligations regarding recovery due under any
 719 insurance implemented specifically for any such improvements.

720 (o) The provisions of this subsection shall not apply to
 721 timeshare condominium associations. Insurance for timeshare
 722 condominium associations shall be maintained pursuant to s.
 723 721.165.

724 (12) OFFICIAL RECORDS.--

725 (b) The official records of the association shall be
 726 maintained within the state for at least 7 years. The records of
 727 the association shall be made available to a unit owner within
 728 45 miles of the condominium property or within the county in

729 | which the condominium property is located within 5 working days
 730 | after receipt of written request by the board or its designee.
 731 | However, such distance requirement does not apply to an
 732 | association governing a timeshare condominium. This paragraph
 733 | may be complied with by having a copy of the official records of
 734 | the association available for inspection or copying on the
 735 | condominium property or association property. ~~or~~ The
 736 | association may offer the option of making the records of the
 737 | association available to a unit owner either electronically via
 738 | the Internet or by allowing the records to be viewed in
 739 | electronic format on a computer screen and printed upon request.

740 | (15) MEETINGS.--Regular meetings of the board of
 741 | administration shall be held at such time and place as provided
 742 | in the bylaws until the first regular meeting of the board held
 743 | on or after October 1, 2009. Thereafter, the location and time
 744 | for regular meetings of the board shall be determined by a
 745 | majority vote of the unit owners at the next regular meeting
 746 | held on or after October 1, 2009. Once the time and place for
 747 | regular meetings of the board have been selected, neither may be
 748 | changed unless approved by a majority vote of the unit owners.
 749 | Regular meetings of the board of administration held on weekdays
 750 | shall be held no earlier than 6 p.m. local time.

751 | (16) LIMIT ON EXPENDITURES.--It shall be unlawful for an
 752 | association to make any expenditure of association funds or to
 753 | make any in-kind contribution of association assets that does
 754 | not relate to the purposes for which the association is
 755 | organized.

756 | (a) The association shall not make any contribution to a

757 campaign or committee of continuous existence governed by
 758 chapter 105 or chapter 106.

759 (b) The association shall not make any contribution to a
 760 charitable organization if the association does not receive a
 761 direct benefit from the organization.

762 (c) The association shall not make any expenditure in
 763 order to retain a person or firm for the purposes of lobbying.

764 (d) Directors of the association shall be jointly and
 765 severally liable to reimburse the association for any
 766 contribution, expenditure, or in-kind contribution made in
 767 violation of this subsection.

768 Section 5. Paragraphs (c), (d), (h), and (o) of subsection
 769 (2) of section 718.112, Florida Statutes, are amended, and
 770 paragraphs (p) and (q) are added to that subsection, to read:

771 718.112 Bylaws.--

772 (2) REQUIRED PROVISIONS.--The bylaws shall provide for the
 773 following and, if they do not do so, shall be deemed to include
 774 the following:

775 (c) Board of administration meetings.--Meetings of the
 776 board of administration at which a quorum of the members is
 777 present shall be open to all unit owners. Any unit owner may
 778 tape record or videotape meetings of the board of
 779 administration. The right to attend such meetings includes the
 780 right to speak at such meetings with reference to all designated
 781 agenda items. The division shall adopt reasonable rules
 782 governing the tape recording and videotaping of the meeting. The
 783 association may adopt written reasonable rules governing the
 784 frequency, duration, and manner of unit owner statements.

CS/HB 1397

2009

785 Adequate notice of all meetings, which notice shall specifically
786 incorporate an identification of agenda items, shall be posted
787 conspicuously on the condominium property at least 48 continuous
788 hours preceding the meeting except in an emergency. If 20
789 percent of the voting interests petition the board to address an
790 item of business, the board shall at its next regular board
791 meeting or at a special meeting of the board, but not later than
792 60 days after the receipt of the petition, place the item on the
793 agenda. Any item not included on the notice may be taken up on
794 an emergency basis by at least a majority plus one of the
795 members of the board. Such emergency action shall be noticed and
796 ratified at the next regular meeting of the board. However,
797 written notice of any meeting at which nonemergency special
798 assessments, or at which amendment to rules regarding unit use,
799 will be considered shall be mailed, delivered, or electronically
800 transmitted to the unit owners and posted conspicuously on the
801 condominium property not less than 14 days prior to the meeting.
802 Evidence of compliance with this 14-day notice shall be made by
803 an affidavit executed by the person providing the notice and
804 filed among the official records of the association. Upon notice
805 to the unit owners, the board shall by duly adopted rule
806 designate a specific location on the condominium property or
807 association property upon which all notices of board meetings
808 shall be posted. If there is no condominium property or
809 association property upon which notices can be posted, notices
810 of board meetings shall be mailed, delivered, or electronically
811 transmitted at least 14 days before the meeting to the owner of
812 each unit. In lieu of or in addition to the physical posting of

CS/HB 1397

2009

813 notice of any meeting of the board of administration on the
814 condominium property, the association may, by reasonable rule,
815 adopt a procedure for conspicuously posting and repeatedly
816 broadcasting the notice and the agenda on a closed-circuit cable
817 television system serving the condominium association. However,
818 if broadcast notice is used in lieu of a notice posted
819 physically on the condominium property, the notice and agenda
820 must be broadcast at least four times every broadcast hour of
821 each day that a posted notice is otherwise required under this
822 section. When broadcast notice is provided, the notice and
823 agenda must be broadcast in a manner and for a sufficient
824 continuous length of time so as to allow an average reader to
825 observe the notice and read and comprehend the entire content of
826 the notice and the agenda. Notice of any meeting in which
827 regular or special assessments against unit owners are to be
828 considered for any reason shall specifically state that
829 assessments will be considered, and the nature, ~~estimated cost,~~
830 ~~and~~ description of the purposes for such assessments, and the
831 proposed cost and percentage amount for possible cost overruns
832 as specifically provided for in the proposed contract. Meetings
833 of a committee to take final action on behalf of the board or
834 make recommendations to the board regarding the association
835 budget are subject to the provisions of this paragraph. Meetings
836 of a committee that does not take final action on behalf of the
837 board or make recommendations to the board regarding the
838 association budget are subject to the provisions of this
839 section, unless those meetings are exempted from this section by
840 the bylaws of the association. Notwithstanding any other law,

CS/HB 1397

2009

841 the requirement that board meetings and committee meetings be
842 open to the unit owners is inapplicable to meetings between the
843 board or a committee and the association's attorney, with
844 respect to proposed or pending litigation, when the meeting is
845 held for the purpose of seeking or rendering legal advice.

846 (d) Unit owner meetings.--

847 1. There shall be an annual meeting of the unit owners
848 held at the location provided in the association bylaws and, if
849 the bylaws are silent as to the location, the meeting shall be
850 held within 45 miles of the condominium property or, if
851 facilities are available on the condominium property, the
852 meeting shall be held at such facilities. However, such distance
853 requirement does not apply to an association governing a
854 timeshare condominium. Unless the bylaws provide otherwise, a
855 vacancy on the board caused by the expiration of a director's
856 term shall be filled by electing a new board member, and the
857 election shall be by secret ballot; however, if the number of
858 vacancies equals or exceeds the number of candidates, no
859 election is required. The terms of all members of the board
860 shall expire at the first annual meeting after July 1, 2009, and
861 at each ~~the~~ annual meeting thereafter and such board members may
862 stand for reelection unless otherwise permitted by the bylaws.
863 In the event that the bylaws permit staggered terms of no more
864 than 2 years ~~and upon approval of a majority of the total voting~~
865 ~~interests,~~ the association board members may serve 2-year
866 staggered terms. If no person is interested in or demonstrates
867 an intention to run for the position of a board member whose
868 term has expired according to the provisions of this

869 | subparagraph, such board member whose term has expired shall be
870 | automatically reappointed to the board of administration and
871 | need not stand for reelection. ~~In a condominium association of~~
872 | ~~more than 10 units, coowners of a unit may not serve as members~~
873 | ~~of the board of directors at the same time. Any unit owner~~
874 | ~~desiring to be a candidate for board membership shall comply~~
875 | ~~with subparagraph 3. A person who has been suspended or removed~~
876 | ~~by the division under this chapter, or who is delinquent in the~~
877 | ~~payment of any fee or assessment as provided in paragraph (n),~~
878 | ~~is not eligible for board membership. A person who has been~~
879 | ~~convicted of any felony in this state or in a United States~~
880 | ~~District or Territorial Court, or who has been convicted of any~~
881 | ~~offense in another jurisdiction that would be considered a~~
882 | ~~felony if committed in this state, is not eligible for board~~
883 | ~~membership unless such felon's civil rights have been restored~~
884 | ~~for a period of no less than 5 years as of the date on which~~
885 | ~~such person seeks election to the board. The validity of an~~
886 | ~~action by the board is not affected if it is later determined~~
887 | ~~that a member of the board is ineligible for board membership~~
888 | ~~due to having been convicted of a felony.~~

889 | 2. The bylaws shall provide the method of calling meetings
890 | of unit owners, including annual meetings. Written notice, which
891 | notice must include an agenda, shall be mailed, hand delivered,
892 | or electronically transmitted to each unit owner at least 14
893 | days prior to the annual meeting and shall be posted in a
894 | conspicuous place on the condominium property at least 14
895 | continuous days preceding the annual meeting. Upon notice to the
896 | unit owners, the board shall by duly adopted rule designate a

897 specific location on the condominium property or association
898 property upon which all notices of unit owner meetings shall be
899 posted; however, if there is no condominium property or
900 association property upon which notices can be posted, this
901 requirement does not apply. In lieu of or in addition to the
902 physical posting of notice of any meeting of the unit owners on
903 the condominium property, the association may, by reasonable
904 rule, adopt a procedure for conspicuously posting and repeatedly
905 broadcasting the notice and the agenda on a closed-circuit cable
906 television system serving the condominium association. However,
907 if broadcast notice is used in lieu of a notice posted
908 physically on the condominium property, the notice and agenda
909 must be broadcast at least four times every broadcast hour of
910 each day that a posted notice is otherwise required under this
911 section. When broadcast notice is provided, the notice and
912 agenda must be broadcast in a manner and for a sufficient
913 continuous length of time so as to allow an average reader to
914 observe the notice and read and comprehend the entire content of
915 the notice and the agenda. Unless a unit owner waives in writing
916 the right to receive notice of the annual meeting, such notice
917 shall be hand delivered, mailed, or electronically transmitted
918 to each unit owner. Notice for meetings and notice for all other
919 purposes shall be mailed to each unit owner at the address last
920 furnished to the association by the unit owner, or hand
921 delivered to each unit owner. However, if a unit is owned by
922 more than one person, the association shall provide notice, for
923 meetings and all other purposes, to that one address which the
924 developer initially identifies for that purpose and thereafter

CS/HB 1397

2009

925 as one or more of the owners of the unit shall so advise the
926 association in writing, or if no address is given or the owners
927 of the unit do not agree, to the address provided on the deed of
928 record. An officer of the association, or the manager or other
929 person providing notice of the association meeting, shall
930 provide an affidavit or United States Postal Service certificate
931 of mailing, to be included in the official records of the
932 association affirming that the notice was mailed or hand
933 delivered, in accordance with this provision.

934 3. The members of the board shall be elected by written
935 ballot or voting machine. Proxies shall in no event be used in
936 electing the board, either in general elections or elections to
937 fill vacancies caused by recall, resignation, or otherwise,
938 unless otherwise provided in this chapter. Not less than 60 days
939 before a scheduled election, the association shall mail,
940 deliver, or electronically transmit, whether by separate
941 association mailing or included in another association mailing,
942 delivery, or transmission, including regularly published
943 newsletters, to each unit owner entitled to a vote, a first
944 notice of the date of the election ~~along with a certification~~
945 ~~form provided by the division attesting that he or she has read~~
946 ~~and understands, to the best of his or her ability, the~~
947 ~~governing documents of the association and the provisions of~~
948 ~~this chapter and any applicable rules.~~ Any unit owner or other
949 eligible person desiring to be a candidate for the board must
950 give written notice to the association not less than 40 days
951 before a scheduled election. Together with the written notice
952 and agenda as set forth in subparagraph 2., the association

CS/HB 1397

2009

953 shall mail, deliver, or electronically transmit a second notice
954 of the election to all unit owners entitled to vote therein,
955 together with a ballot which shall list all candidates. Upon
956 request of a candidate, the association shall include an
957 information sheet, no larger than 8 1/2 inches by 11 inches,
958 which must be furnished by the candidate not less than 35 days
959 before the election, ~~along with the signed certification form~~
960 ~~provided for in this subparagraph,~~ to be included with the
961 mailing, delivery, or transmission of the ballot, with the costs
962 of mailing, delivery, or electronic transmission and copying to
963 be borne by the association. The association is not liable for
964 the contents of the information sheets prepared by the
965 candidates. In order to reduce costs, the association may print
966 or duplicate the information sheets on both sides of the paper.
967 The division shall by rule establish voting procedures
968 consistent with the provisions contained herein, including rules
969 establishing procedures for giving notice by electronic
970 transmission and rules providing for the secrecy of ballots.
971 Elections shall be decided by a plurality of those ballots cast.
972 There shall be no quorum requirement; however, at least 20
973 percent of the eligible voters must cast a ballot in order to
974 have a valid election of members of the board. No unit owner
975 shall permit any other person to vote his or her ballot, and any
976 such ballots improperly cast shall be deemed invalid, provided
977 any unit owner who violates this provision may be fined by the
978 association in accordance with s. 718.303. A unit owner who
979 needs assistance in casting the ballot for the reasons stated in
980 s. 101.051 may obtain assistance in casting the ballot. The

981 regular election shall occur on the date of the annual meeting.
 982 The provisions of this subparagraph shall not apply to timeshare
 983 condominium associations. Notwithstanding the provisions of this
 984 subparagraph, an election is not required unless more candidates
 985 file notices of intent to run or are nominated than board
 986 vacancies exist.

987 4. Any approval by unit owners called for by this chapter
 988 or the applicable declaration or bylaws, including, but not
 989 limited to, the approval requirement in s. 718.111(8), shall be
 990 made at a duly noticed meeting of unit owners and shall be
 991 subject to all requirements of this chapter or the applicable
 992 condominium documents relating to unit owner decisionmaking,
 993 except that unit owners may take action by written agreement,
 994 without meetings, on matters for which action by written
 995 agreement without meetings is expressly allowed by the
 996 applicable bylaws or declaration or any statute that provides
 997 for such action.

998 5. Unit owners may waive notice of specific meetings if
 999 allowed by the applicable bylaws or declaration or any statute.
 1000 If authorized by the bylaws, notice of meetings of the board of
 1001 administration, unit owner meetings, except unit owner meetings
 1002 called to recall board members under paragraph (j), and
 1003 committee meetings may be given by electronic transmission to
 1004 unit owners who consent to receive notice by electronic
 1005 transmission.

1006 6. Unit owners shall have the right to participate in
 1007 meetings of unit owners with reference to all designated agenda
 1008 items. However, the association may adopt reasonable rules

1009 governing the frequency, duration, and manner of unit owner
 1010 participation.

1011 7. Any unit owner may tape record or videotape a meeting
 1012 of the unit owners subject to reasonable rules adopted by the
 1013 division.

1014 8. Unless otherwise provided in the bylaws, any vacancy
 1015 occurring on the board before the expiration of a term may be
 1016 filled by the affirmative vote of the majority of the remaining
 1017 directors, even if the remaining directors constitute less than
 1018 a quorum, or by the sole remaining director. In the alternative,
 1019 a board may hold an election to fill the vacancy, in which case
 1020 the election procedures must conform to the requirements of
 1021 subparagraph 3. unless the association governs 10 units or less
 1022 and has opted out of the statutory election process, in which
 1023 case the bylaws of the association control. Unless otherwise
 1024 provided in the bylaws, a board member appointed or elected
 1025 under this section shall fill the vacancy for the unexpired term
 1026 of the seat being filled. Filling vacancies created by recall is
 1027 governed by paragraph (j) and rules adopted by the division.

1028 9. Notwithstanding subparagraphs (b)2. and (d)3., an
 1029 association of 10 or fewer units may, by the affirmative vote of
 1030 a majority of the total voting interests, provide for different
 1031 voting and election procedures in its bylaws, which vote may be
 1032 by a proxy specifically delineating the different voting and
 1033 election procedures. The different voting and election
 1034 procedures may provide for elections to be conducted by limited
 1035 or general proxy.

1036 (h) Amendment of bylaws.--

1037 1. The method by which the bylaws may be amended
 1038 consistent with the provisions of this chapter shall be stated.
 1039 If the bylaws fail to provide a method of amendment, the bylaws
 1040 may be amended if the amendment is approved by the owners of not
 1041 less than two-thirds of the voting interests.

1042 2. No bylaw shall be revised or amended by reference to
 1043 its title or number only. Proposals to amend existing bylaws
 1044 shall contain the full text of the bylaws to be amended; new
 1045 words shall be inserted in the text underlined, and words to be
 1046 deleted shall be lined through with hyphens. However, if the
 1047 proposed change is so extensive that this procedure would
 1048 hinder, rather than assist, the understanding of the proposed
 1049 amendment, it is not necessary to use underlining and hyphens as
 1050 indicators of words added or deleted, but, instead, a notation
 1051 must be inserted immediately preceding the proposed amendment in
 1052 substantially the following language: "Substantial rewording of
 1053 bylaw. See bylaw _____ for present text."

1054 3. Nonmaterial errors or omissions in the bylaw process
 1055 will not invalidate an otherwise properly promulgated amendment.

1056 4. If the bylaws provide for amendment by the board of
 1057 administration, no bylaw may be amended unless it is heard and
 1058 noticed at two consecutive meetings of the board of
 1059 administration that are at least 1 week apart.

1060 (o) Director or officer offenses.--A director or officer
 1061 charged by information or indictment with a felony theft or
 1062 embezzlement offense involving the association's funds or
 1063 property shall be removed from office, creating a vacancy in the
 1064 office to be filled according to law. While such director or

CS/HB 1397

2009

1065 officer has such criminal charge pending in the state or federal
1066 court system, he or she may not be appointed or elected to a
1067 position as a director or officer. However, should the charges
1068 be resolved without a finding of guilt, the director or officer
1069 shall be reinstated for the remainder of his or her term of
1070 office, if any.

1071 (p) Qualification of directors.--In addition to any other
1072 requirement for office in statute, a person running for or
1073 seeking appointment to the board must meet the following
1074 qualifications:

1075 1. In a condominium association of 10 or more units, only
1076 one individual coowner of a unit may serve on the board of
1077 administration.

1078 2. No person may serve as a director of any condominium
1079 association in the state if restricted from serving by action of
1080 the division pursuant to s. 718.501(1)(d)6.

1081 3. A person who has been convicted of any felony in this
1082 state or in a United States District or Territorial Court, or
1083 who has been convicted of any offense in another jurisdiction
1084 that would be considered a felony if committed in this state, is
1085 not eligible for board membership unless such felon's civil
1086 rights have been restored for a period of no less than 5 years
1087 as of the date on which such person seeks election to the board.

1088 4. Within 30 days after being elected or appointed to the
1089 board of administration, a director shall certify in writing to
1090 the secretary of the association that he or she has read parts I
1091 and III of chapter 718 and the association's declaration of
1092 condominium, articles of incorporation, bylaws, and current

1093 written policies. The director shall further certify that he or
 1094 she will work to uphold such documents and policies to the best
 1095 of his or her ability, and that he or she will faithfully
 1096 discharge his or her fiduciary responsibility to the
 1097 association's members. If the division finds that a director has
 1098 falsely certified that he or she has read the required statutes
 1099 and documents, the division shall order the director removed
 1100 from the board and shall order the director to reimburse the
 1101 division for the cost of prosecution and hearing.

1102 5. After turnover of the association pursuant to s.
 1103 718.301(2), a director must:

1104 a. If the unit is owned by an individual or individuals,
 1105 be one of those individuals.

1106 b. If the unit is owned by a trust, be an individual
 1107 qualified pursuant to s. 617.0802.

1108
 1109 These qualifications shall operate on a continuing basis, and
 1110 upon the failure of a director at any time to meet a
 1111 qualification, the director shall be removed from office and
 1112 that office shall be deemed vacant. However, in the case of a
 1113 timeshare condominium association, the bylaws of the association
 1114 shall govern the terms, expiration of terms, and staggered terms
 1115 of board members, and the eligibility of coowners to serve on
 1116 the board of administration shall not be restricted except in
 1117 the manner provided in the bylaws of the timeshare condominium
 1118 association.

1119 (q) Borrowing.--The borrowing of funds or committing to a
 1120 line of credit by the board of administration shall be

1121 considered a special assessment, and any meeting of the board of
 1122 administration to discuss such matters shall be noticed as
 1123 provided in paragraph (c). The board shall not have the
 1124 authority to enter into a line of credit or borrow funds for any
 1125 purpose unless the specific use of the funds from the line of
 1126 credit or loan is set forth in the notice of meeting with the
 1127 same specificity as required for a special assessment or unless
 1128 the borrowing or line of credit has received the prior approval
 1129 of not less than two-thirds of the voting interests of the
 1130 association.

1131 Section 6. Paragraph (a) of subsection (5) of section
 1132 718.113, Florida Statutes, is amended to read:

1133 718.113 Maintenance; limitation upon improvement; display
 1134 of flag; hurricane shutters; display of religious decorations.--

1135 (5) Each board of administration shall adopt hurricane
 1136 shutter specifications for each building within each condominium
 1137 operated by the association which shall include color, style,
 1138 and other factors deemed relevant by the board. All
 1139 specifications adopted by the board shall comply with the
 1140 applicable building code.

1141 (a) The board may, subject to the provisions of s.
 1142 718.3026, and the approval of a majority of voting interests of
 1143 the condominium, install hurricane shutters or hurricane
 1144 protection that complies with or exceeds the applicable building
 1145 code, or both, except that a vote of the owners is not required
 1146 if the maintenance, repair, and replacement of hurricane
 1147 shutters or other forms of hurricane protection are the
 1148 responsibility of the association pursuant to the declaration of

CS/HB 1397

2009

1149 | condominium. However, where hurricane protection or laminated
1150 | glass or window film architecturally designed to function as
1151 | hurricane protection which complies with or exceeds the current
1152 | applicable building code has been previously installed, the
1153 | board may not install hurricane shutters or other hurricane
1154 | protection. Code-compliant impact glass may be installed by the
1155 | association as hurricane protection if the area in which the
1156 | glass is to be installed is an area that is the responsibility
1157 | of the association. If a unit owner installed code-compliant
1158 | impact glass prior to the association voting to install such
1159 | glass, and such glass and the frame thereof complies with the
1160 | current applicable building codes and is otherwise in good
1161 | repair, the unit owner shall not be required to pay the unit
1162 | owner's pro rata share of the cost of installing code-compliant
1163 | impact glass to the condominium association, notwithstanding s.
1164 | 718.116(9).

1165 | Section 7. Subsection (1) of section 718.116, Florida
1166 | Statutes, is amended to read:

1167 | 718.116 Assessments; liability; lien and priority;
1168 | interest; collection.--

1169 | (1) (a) A unit owner, regardless of how his or her title
1170 | has been acquired, including by purchase at a foreclosure sale
1171 | or by deed in lieu of foreclosure, is liable for all assessments
1172 | which come due while he or she is the unit owner. Additionally,
1173 | a unit owner is jointly and severally liable with the previous
1174 | owner for all unpaid assessments that came due up to the time of
1175 | transfer of title. This liability is without prejudice to any
1176 | right the owner may have to recover from the previous owner the

CS/HB 1397

2009

1177 amounts paid by the owner.

1178 (b) The liability of a first mortgagee or its successor or
1179 assignees who acquire title to a unit by foreclosure or by deed
1180 in lieu of foreclosure for the unpaid assessments that became
1181 due prior to the mortgagee's acquisition of title is limited to
1182 the lesser of:

1183 1. The unit's unpaid common expenses and regular periodic
1184 assessments which accrued or came due during the 6 months
1185 immediately preceding the acquisition of title and for which
1186 payment in full has not been received by the association; or

1187 2. One-half of the unit's unpaid common expenses and
1188 regular periodic assessments which accrued or came due from the
1189 filing of the foreclosure action through the sale of the unit,
1190 provided that the mortgagee timely paid in full the payment
1191 required by paragraph (e) and, at the same time, remitted to the
1192 association advanced common expenses and regular periodic
1193 assessments equal to one-half of the total unpaid common
1194 expenses and regular periodic assessments that came due in that
1195 time period. Any such advance shall be taxed as a cost in the
1196 foreclosure action, and the mortgagor shall be personally liable
1197 to the mortgagee for the value of the payment made to the
1198 association plus interest at the interest rate provided for in
1199 the promissory note for advances. ~~One percent of the original~~
1200 ~~mortgage debt. The provisions of this paragraph apply only if~~
1201 ~~the first mortgagee joined the association as a defendant in the~~
1202 ~~foreclosure action. Joinder of the association is not required~~
1203 ~~if, on the date the complaint is filed, the association was~~
1204 ~~dissolved or did not maintain an office or agent for service of~~

1205 ~~process at a location which was known to or reasonably~~
 1206 ~~discoverable by the mortgagee.~~

1207 (c) The person acquiring title shall pay the amount owed
 1208 to the association within 30 days after transfer of title.
 1209 Failure to pay the full amount when due shall entitle the
 1210 association to record a claim of lien against the parcel and
 1211 proceed in the same manner as provided in this section for the
 1212 collection of unpaid assessments.

1213 (d) With respect to each timeshare unit, each owner of a
 1214 timeshare estate therein is jointly and severally liable for the
 1215 payment of all assessments and other charges levied against or
 1216 with respect to that unit pursuant to the declaration or bylaws,
 1217 except to the extent that the declaration or bylaws may provide
 1218 to the contrary.

1219 (e) A mortgagee who files a foreclosure case on a mortgage
 1220 secured by a condominium unit shall pay to the association
 1221 within 15 days after the filing of the action all of the
 1222 condominium unit's then unpaid common expenses and regular
 1223 periodic assessments which accrued or came due up to the date of
 1224 the filing of the foreclosure action. The payment shall be taxed
 1225 as a cost in the foreclosure action, and the mortgagor shall be
 1226 personally liable to the mortgagee for the value of the payment
 1227 made to the association plus interest at the interest rate
 1228 provided for in the promissory note for advances. The court
 1229 shall dismiss a foreclosure action on the association's motion
 1230 to dismiss for failure to make such payment and shall award the
 1231 association the costs and reasonable attorney's fees related to
 1232 the motion. ~~Notwithstanding the provisions of paragraph (b), a~~

1233 ~~first mortgagee or its successor or assignees who acquire title~~
 1234 ~~to a condominium unit as a result of the foreclosure of the~~
 1235 ~~mortgage or by deed in lieu of foreclosure of the mortgage shall~~
 1236 ~~be exempt from liability for all unpaid assessments attributable~~
 1237 ~~to the parcel or chargeable to the previous owner which came due~~
 1238 ~~prior to acquisition of title if the first mortgage was recorded~~
 1239 ~~prior to April 1, 1992. If, however, the first mortgage was~~
 1240 ~~recorded on or after April 1, 1992, or on the date the mortgage~~
 1241 ~~was recorded, the declaration included language incorporating by~~
 1242 ~~reference future amendments to this chapter, the provisions of~~
 1243 ~~paragraph (b) shall apply.~~

1244 (f) The provisions of this subsection are intended to
 1245 clarify existing law, and shall not be available in any case
 1246 where the unpaid assessments sought to be recovered by the
 1247 association are secured by a lien recorded prior to the
 1248 recording of the mortgage. Notwithstanding the provisions of
 1249 chapter 48, the association shall be a proper party to intervene
 1250 in any foreclosure proceeding to seek equitable relief.

1251 (g) For purposes of this subsection, the term "successor
 1252 or assignee" as used with respect to a first mortgagee includes
 1253 only a subsequent holder of the first mortgage.

1254 Section 8. Subsection (5) of section 718.1255, Florida
 1255 Statutes, is amended to read:

1256 718.1255 Alternative dispute resolution; voluntary
 1257 mediation; mandatory nonbinding arbitration; legislative
 1258 findings.--

1259 (5) DISPUTES INVOLVING ELECTION AND RECALL
 1260 IRREGULARITIES.--

1261 (a) Every arbitration petition received by the division
1262 and required to be filed under this section challenging the
1263 legality of the election of any director of the board of
1264 administration, or challenging the failure or refusal of a board
1265 of administration to conduct a recall election or to recognize
1266 the results of a recall election, must be handled on an
1267 expedited basis.

1268 (b) The provisions of this subsection shall control over
1269 any conflicting provision of subsection (4).

1270 (c) An election or recall arbitration hearing shall be
1271 conducted within 15 days after the filing of the arbitration
1272 petition. The filing fee for a petition under this subsection is
1273 \$150. Upon receipt of the petition and fee, the division shall
1274 immediately notify the board of the petition and shall order the
1275 board and the petitioner to appear at a certain date and time
1276 for the arbitration hearing. When possible, an arbitration
1277 hearing shall be conducted in a meeting room within the
1278 condominium property that is capable of accommodating all
1279 members desiring to attend.

1280 (d) The notice of the hearing shall specify that the board
1281 is to appear with all of the original ballots and other relevant
1282 election materials. The failure of the board to appear with the
1283 ballots and other election materials is grounds for removing the
1284 members of the board from office and ruling in favor of the
1285 petitioner.

1286 (e) The arbitrator shall, at the conclusion of the
1287 hearing, issue an oral ruling that shall go into effect
1288 immediately regardless of whether a trial de novo is requested.

1289 The arbitrator shall issue a conforming written opinion within
 1290 10 days after the hearing. The date of the written opinion shall
 1291 be the date from which the date to file for a trial de novo
 1292 shall be calculated. The prevailing party may seek enforcement
 1293 of the oral ruling in the circuit court.

1294 (f) Upon receipt of the notice of arbitration under this
 1295 subsection, the director may not make or authorize any
 1296 extraordinary expense except in an emergency.

1297 (g) The arbitration shall be conducted in the manner
 1298 provided by the division's rules for election and recall
 1299 arbitration disputes.

1300 Section 9. Subsection (2) of section 718.1265, Florida
 1301 Statutes, is amended to read:

1302 718.1265 Association emergency powers.--

1303 (2) The special powers authorized under subsection (1)
 1304 shall be limited to that time reasonably necessary to protect
 1305 the health, safety, and welfare of the association and the unit
 1306 owners and the unit owners' family members, tenants, guests,
 1307 agents, or invitees and shall be reasonably necessary to
 1308 mitigate further damage and make emergency repairs.

1309 Additionally, unless 20 percent or more of the units are made
 1310 uninhabitable by the emergency, the special powers authorized
 1311 under subsection (1) shall only be exercised during the term of
 1312 the Governor's executive order or proclamation declaring the
 1313 state of emergency in the locale in which the condominium is
 1314 located.

1315 Section 10. Subsection (1) of section 718.501, Florida
 1316 Statutes, is amended, and subsection (3) is added to that

1317 section, to read:

1318 718.501 Authority, responsibility, and duties of Division
 1319 of Florida Condominiums, Timeshares, and Mobile Homes.--

1320 (1) The Division of Florida Condominiums, Timeshares, and
 1321 Mobile Homes of the Department of Business and Professional
 1322 Regulation, referred to as the "division" in this part, has the
 1323 power to enforce and ensure compliance with the provisions of
 1324 this chapter and rules relating to the development,
 1325 construction, sale, lease, ownership, operation, and management
 1326 of residential condominium units. In performing its duties, the
 1327 division has complete jurisdiction to investigate complaints and
 1328 enforce compliance with the provisions of this chapter with
 1329 respect to associations that are still under developer control
 1330 and complaints against developers involving improper turnover or
 1331 failure to turnover, pursuant to s. 718.301. However, after
 1332 turnover has occurred, the division shall only have jurisdiction
 1333 to investigate complaints related to financial issues, failure
 1334 to maintain common elements, elections, and unit owner access to
 1335 association records pursuant to s. 718.111(12).

1336 (a)1. The division may make necessary public or private
 1337 investigations within or outside this state to determine whether
 1338 any person has violated this chapter or any rule or order
 1339 hereunder, to aid in the enforcement of this chapter, or to aid
 1340 in the adoption of rules or forms hereunder.

1341 2. The division may submit any official written report,
 1342 worksheet, or other related paper, or a duly certified copy
 1343 thereof, compiled, prepared, drafted, or otherwise made by and
 1344 duly authenticated by a financial examiner or analyst to be

1345 admitted as competent evidence in any hearing in which the
1346 financial examiner or analyst is available for cross-examination
1347 and attests under oath that such documents were prepared as a
1348 result of an examination or inspection conducted pursuant to
1349 this chapter.

1350 (b) The division may require or permit any person to file
1351 a statement in writing, under oath or otherwise, as the division
1352 determines, as to the facts and circumstances concerning a
1353 matter to be investigated.

1354 (c) For the purpose of any investigation under this
1355 chapter, the division director or any officer or employee
1356 designated by the division director may administer oaths or
1357 affirmations, subpoena witnesses and compel their attendance,
1358 take evidence, and require the production of any matter which is
1359 relevant to the investigation, including the existence,
1360 description, nature, custody, condition, and location of any
1361 books, documents, or other tangible things and the identity and
1362 location of persons having knowledge of relevant facts or any
1363 other matter reasonably calculated to lead to the discovery of
1364 material evidence. Upon the failure by a person to obey a
1365 subpoena or to answer questions propounded by the investigating
1366 officer and upon reasonable notice to all persons affected
1367 thereby, the division may apply to the circuit court for an
1368 order compelling compliance.

1369 (d) Notwithstanding any remedies available to unit owners
1370 and associations, if the division has reasonable cause to
1371 believe that a violation of any provision of this chapter or
1372 related rule has occurred, the division may institute

1373 enforcement proceedings in its own name against any developer,
 1374 association, officer, or member of the board of administration,
 1375 or its assignees or agents, as follows:

1376 1. The division may permit a person whose conduct or
 1377 actions may be under investigation to waive formal proceedings
 1378 and enter into a consent proceeding whereby orders, rules, or
 1379 letters of censure or warning, whether formal or informal, may
 1380 be entered against the person.

1381 2. The division may issue an order requiring the
 1382 developer, association, ~~developer-designated~~ officer, or
 1383 ~~developer-designated~~ member of the board of administration,
 1384 ~~developer-designated~~ assignees or agents, community association
 1385 manager, or community association management firm to cease and
 1386 desist from the unlawful practice and take such affirmative
 1387 action as in the judgment of the division will carry out the
 1388 purposes of this chapter. If the division finds that a
 1389 developer, association, officer, or member of the board of
 1390 administration, or its assignees or agents, is violating or is
 1391 about to violate any provision of this chapter, any rule adopted
 1392 or order issued by the division, or any written agreement
 1393 entered into with the division, and presents an immediate danger
 1394 to the public requiring an immediate final order, it may issue
 1395 an emergency cease and desist order reciting with particularity
 1396 the facts underlying such findings. The emergency cease and
 1397 desist order is effective for 90 days. If the division begins
 1398 nonemergency cease and desist proceedings, the emergency cease
 1399 and desist order remains effective until the conclusion of the
 1400 proceedings under ss. 120.569 and 120.57.

CS/HB 1397

2009

1401 3. If a developer fails to pay any restitution determined
1402 by the division to be owed, plus any accrued interest at the
1403 highest rate permitted by law, within 30 days after expiration
1404 of any appellate time period of a final order requiring payment
1405 of restitution or the conclusion of any appeal thereof,
1406 whichever is later, the division shall bring an action in
1407 circuit or county court on behalf of any association, class of
1408 unit owners, lessees, or purchasers for restitution, declaratory
1409 relief, injunctive relief, or any other available remedy. The
1410 division may also temporarily revoke its acceptance of the
1411 filing for the developer to which the restitution relates until
1412 payment of restitution is made.

1413 4. The division may petition the court for the appointment
1414 of a receiver or conservator. If appointed, the receiver or
1415 conservator may take action to implement the court order to
1416 ensure the performance of the order and to remedy any breach
1417 thereof. In addition to all other means provided by law for the
1418 enforcement of an injunction or temporary restraining order, the
1419 circuit court may impound or sequester the property of a party
1420 defendant, including books, papers, documents, and related
1421 records, and allow the examination and use of the property by
1422 the division and a court-appointed receiver or conservator.

1423 5. The division may apply to the circuit court for an
1424 order of restitution whereby the defendant in an action brought
1425 pursuant to subparagraph 4. shall be ordered to make restitution
1426 of those sums shown by the division to have been obtained by the
1427 defendant in violation of this chapter. Such restitution shall,
1428 at the option of the court, be payable to the conservator or

1429 receiver appointed pursuant to subparagraph 4. or directly to
1430 the persons whose funds or assets were obtained in violation of
1431 this chapter.

1432 6. The division may impose a civil penalty against a
1433 developer or association, or its assignee or agent, for any
1434 violation of this chapter or a rule adopted under this chapter.
1435 The division may impose a civil penalty individually against any
1436 officer or board member who willfully and knowingly violates a
1437 provision of this chapter, adopted rule, or a final order of the
1438 division; may order the removal of such individual as an officer
1439 or from the board of administration or as an officer of the
1440 association; and may prohibit such individual from serving as an
1441 officer or on the board of a community association for a period
1442 of time. The term "willfully and knowingly" means that the
1443 division informed the officer or board member that his or her
1444 action or intended action violates this chapter, a rule adopted
1445 under this chapter, or a final order of the division and that
1446 the officer or board member refused to comply with the
1447 requirements of this chapter, a rule adopted under this chapter,
1448 or a final order of the division. The division, prior to
1449 initiating formal agency action under chapter 120, shall afford
1450 the officer or board member an opportunity to voluntarily comply
1451 with this chapter, a rule adopted under this chapter, or a final
1452 order of the division. An officer or board member who complies
1453 within 10 days is not subject to a civil penalty. A penalty may
1454 be imposed on the basis of each day of continuing violation, but
1455 in no event shall the penalty for any offense exceed \$5,000. By
1456 January 1, 1998, the division shall adopt, by rule, penalty

CS/HB 1397

2009

1457 guidelines applicable to possible violations or to categories of
1458 violations of this chapter or rules adopted by the division. The
1459 guidelines must specify a meaningful range of civil penalties
1460 for each such violation of the statute and rules and must be
1461 based upon the harm caused by the violation, the repetition of
1462 the violation, and upon such other factors deemed relevant by
1463 the division. For example, the division may consider whether the
1464 violations were committed by a developer or owner-controlled
1465 association, the size of the association, and other factors. The
1466 guidelines must designate the possible mitigating or aggravating
1467 circumstances that justify a departure from the range of
1468 penalties provided by the rules. It is the legislative intent
1469 that minor violations be distinguished from those which endanger
1470 the health, safety, or welfare of the condominium residents or
1471 other persons and that such guidelines provide reasonable and
1472 meaningful notice to the public of likely penalties that may be
1473 imposed for proscribed conduct. This subsection does not limit
1474 the ability of the division to informally dispose of
1475 administrative actions or complaints by stipulation, agreed
1476 settlement, or consent order. All amounts collected shall be
1477 deposited with the Chief Financial Officer to the credit of the
1478 Division of Florida Condominiums, Timeshares, and Mobile Homes
1479 Trust Fund. If a developer fails to pay the civil penalty and
1480 the amount deemed to be owed to the association, the division
1481 shall issue an order directing that such developer cease and
1482 desist from further operation until such time as the civil
1483 penalty is paid or may pursue enforcement of the penalty in a
1484 court of competent jurisdiction. If an association fails to pay

CS/HB 1397

2009

1485 the civil penalty, the division shall pursue enforcement in a
1486 court of competent jurisdiction, and the order imposing the
1487 civil penalty or the cease and desist order will not become
1488 effective until 20 days after the date of such order. Any action
1489 commenced by the division shall be brought in the county in
1490 which the division has its executive offices or in the county
1491 where the violation occurred.

1492 7. If a unit owner presents the division with proof that
1493 the unit owner has requested access to official records in
1494 writing by certified mail, and that after 10 days the unit owner
1495 again made the same request for access to official records in
1496 writing by certified mail, and that more than 10 days has
1497 elapsed since the second request and the association has still
1498 failed or refused to provide access to official records as
1499 required by this chapter, the division shall issue a subpoena
1500 requiring production of the requested records where the records
1501 are kept pursuant to s. 718.112.

1502 8. In addition to subparagraph 6., the division may seek
1503 the imposition of a civil penalty through the circuit court for
1504 any violation for which the division may issue a notice to show
1505 cause under paragraph (r). The civil penalty shall be at least
1506 \$500 but no more than \$5,000 for each violation. The court may
1507 also award to the prevailing party court costs and reasonable
1508 attorney's fees and, if the division prevails, may also award
1509 reasonable costs of investigation.

1510 9. Notwithstanding subparagraph 6., when the division
1511 finds that an officer or director has intentionally falsified
1512 association records with the intent to conceal material facts

1513 from the division, the board, or unit owners, the division shall
1514 prohibit the officer or director from acting as an officer or
1515 director of any condominium, cooperative, or homeowners'
1516 association for at least 1 year.

1517 10. When the division finds that any person has derived an
1518 improper personal benefit from a condominium association, the
1519 division shall order the person to pay restitution to the
1520 association and shall order the person to pay to the division
1521 the costs of investigation and prosecution.

1522 (e) The division may prepare and disseminate a prospectus
1523 and other information to assist prospective owners, purchasers,
1524 lessees, and developers of residential condominiums in assessing
1525 the rights, privileges, and duties pertaining thereto.

1526 (f) The division has authority to adopt rules pursuant to
1527 ss. 120.536(1) and 120.54 to implement and enforce the
1528 provisions of this chapter.

1529 (g) The division shall establish procedures for providing
1530 notice to an association and the developer during the period
1531 where the developer controls the association when the division
1532 is considering the issuance of a declaratory statement with
1533 respect to the declaration of condominium or any related
1534 document governing in such condominium community.

1535 (h) The division shall furnish each association which pays
1536 the fees required by paragraph (2) (a) a copy of this act,
1537 subsequent changes to this act on an annual basis, an amended
1538 version of this act as it becomes available from the Secretary
1539 of State's office on a biennial basis, and the rules adopted
1540 thereto on an annual basis.

1541 (i) The division shall annually provide each association
 1542 with a summary of declaratory statements and formal legal
 1543 opinions relating to the operations of condominiums which were
 1544 rendered by the division during the previous year.

1545 (j) The division shall provide training and educational
 1546 programs for condominium association board members and unit
 1547 owners. The training may, in the division's discretion, include
 1548 web-based electronic media, and live training and seminars in
 1549 various locations throughout the state. The division shall have
 1550 the authority to review and approve education and training
 1551 programs for board members and unit owners offered by providers
 1552 and shall maintain a current list of approved programs and
 1553 providers and shall make such list available to board members
 1554 and unit owners in a reasonable and cost-effective manner.

1555 (k) The division shall maintain a toll-free telephone
 1556 number accessible to condominium unit owners.

1557 (l) The division shall develop a program to certify both
 1558 volunteer and paid mediators to provide mediation of condominium
 1559 disputes. The division shall provide, upon request, a list of
 1560 such mediators to any association, unit owner, or other
 1561 participant in arbitration proceedings under s. 718.1255
 1562 requesting a copy of the list. The division shall include on the
 1563 list of volunteer mediators only the names of persons who have
 1564 received at least 20 hours of training in mediation techniques
 1565 or who have mediated at least 20 disputes. In order to become
 1566 initially certified by the division, paid mediators must be
 1567 certified by the Supreme Court to mediate court cases in county
 1568 or circuit courts. However, the division may adopt, by rule,

CS/HB 1397

2009

1569 additional factors for the certification of paid mediators,
1570 which factors must be related to experience, education, or
1571 background. Any person initially certified as a paid mediator by
1572 the division must, in order to continue to be certified, comply
1573 with the factors or requirements imposed by rules adopted by the
1574 division.

1575 (m) When a complaint is made, the division shall conduct
1576 its inquiry with due regard to the interests of the affected
1577 parties. Within 30 days after receipt of a complaint, the
1578 division shall acknowledge the complaint in writing and notify
1579 the complainant whether the complaint is within the jurisdiction
1580 of the division and whether additional information is needed by
1581 the division from the complainant. The division shall conduct
1582 its investigation and shall, within 90 days after receipt of the
1583 original complaint or of timely requested additional
1584 information, take action upon the complaint. However, the
1585 failure to complete the investigation within 90 days does not
1586 prevent the division from continuing the investigation,
1587 accepting or considering evidence obtained or received after 90
1588 days, or taking administrative action if reasonable cause exists
1589 to believe that a violation of this chapter or a rule of the
1590 division has occurred. If an investigation is not completed
1591 within the time limits established in this paragraph, the
1592 division shall, on a monthly basis, notify the complainant in
1593 writing of the status of the investigation. When reporting its
1594 action to the complainant, the division shall inform the
1595 complainant of any right to a hearing pursuant to ss. 120.569
1596 and 120.57.

1597 (n) Condominium association directors, officers, and
1598 employees; condominium developers; community association
1599 managers; and community association management firms have an
1600 ongoing duty to reasonably cooperate with the division in any
1601 investigation pursuant to this section. The division shall refer
1602 to local law enforcement authorities any person whom the
1603 division believes has altered, destroyed, concealed, or removed
1604 any record, document, or thing required to be kept or maintained
1605 by this chapter with the purpose to impair its verity or
1606 availability in the department's investigation.

1607 (o) The division may:

- 1608 1. Contract with agencies in this state or other
- 1609 jurisdictions to perform investigative functions; or
- 1610 2. Accept grants-in-aid from any source.

1611 (p) The division shall cooperate with similar agencies in
1612 other jurisdictions to establish uniform filing procedures and
1613 forms, public offering statements, advertising standards, and
1614 rules and common administrative practices.

1615 (q) The division shall consider notice to a developer to
1616 be complete when it is delivered to the developer's address
1617 currently on file with the division.

1618 (r) In addition to its enforcement authority, the division
1619 may issue a notice to show cause, which shall provide for a
1620 hearing, upon written request, in accordance with chapter 120.

1621 (s) The division shall submit to the Governor, the
1622 President of the Senate, the Speaker of the House of
1623 Representatives, and the chairs of the legislative
1624 appropriations committees an annual report that includes, but

CS/HB 1397

2009

1625 need not be limited to, the number of training programs provided
1626 for condominium association board members and unit owners, the
1627 number of complaints received by type, the number and percent of
1628 complaints acknowledged in writing within 30 days and the number
1629 and percent of investigations acted upon within 90 days in
1630 accordance with paragraph (m), and the number of investigations
1631 exceeding the 90-day requirement. The annual report shall also
1632 include an evaluation of the division's core business processes
1633 and make recommendations for improvements, including statutory
1634 changes. The report shall be submitted by September 30 following
1635 the end of the fiscal year.

1636 (3) The division shall create a booklet of the laws that a
1637 director must read as required by s. 718.112(2)(p)4. The booklet
1638 shall be available for free download from the division's
1639 website. The division may provide a printed version to directors
1640 for free or for a cost not to exceed the division's actual cost
1641 of production and mailing.

1642 Section 11. Subsection (9) of section 718.5012, Florida
1643 Statutes, is amended to read:

1644 718.5012 Ombudsman; powers and duties.--The ombudsman
1645 shall have the powers that are necessary to carry out the duties
1646 of his or her office, including the following specific powers:

1647 (9) To assist with the resolution of disputes between unit
1648 owners and the association or between unit owners when the
1649 dispute is not within the jurisdiction of the division to
1650 resolve or the division has declined to resolve a dispute.

1651 Section 12. Subsection (1) of section 718.50151, Florida
1652 Statutes, is amended to read:

CS/HB 1397

2009

1653 718.50151 Community Association ~~Living~~ Study Council;
1654 membership functions.--

1655 (1) There is created the Community Association ~~Living~~
1656 Study Council. The council shall consist of seven appointed
1657 members. Two members shall be appointed by the President of the
1658 Senate, two members shall be appointed by the Speaker of the
1659 House of Representatives, and three members shall be appointed
1660 by the Governor. ~~One member that is appointed by the Governor~~
1661 ~~may represent timeshare condominiums.~~ The council shall be
1662 created ~~as of October 1 every 5 years,~~ commencing July ~~October~~
1663 1, 2009 ~~2008,~~ and shall exist for a ~~6-month term.~~ The director
1664 of the division shall appoint an ex officio nonvoting member.
1665 The Legislature intends that the persons appointed represent a
1666 cross-section of persons experienced ~~interested~~ in community
1667 association issues. No member of the council may be a registered
1668 lobbyist, partner or shareholder in a firm providing lobbying
1669 services, or principal or employee of a lobbying firm who is
1670 provided compensation by community associations. The council
1671 shall be located within the division for administrative
1672 purposes. Members of the council shall serve without
1673 compensation but are entitled to receive per diem and travel
1674 expenses pursuant to s. 112.061 while on official business. The
1675 initial members of the council shall be those persons formerly
1676 appointed to the Community Association Living Study Council who
1677 are otherwise qualified to serve on the Community Association
1678 Study Council.

1679 Section 13. Subsections (11) and (26) of section 719.103,
1680 Florida Statutes, are amended to read:

1681 719.103 Definitions.--As used in this chapter:
 1682 (11) "Conspicuous type" means bold type in capital letters
 1683 no smaller than the largest type, exclusive of headings, on the
 1684 page on which it appears and, in all cases, at least 10-point
 1685 type. When conspicuous type is required, it must be separated on
 1686 all sides from other type and print. Conspicuous type may be
 1687 used in a contract for purchase and sale of a unit, a lease of a
 1688 unit for more than 5 years, or a prospectus or offering circular
 1689 only when required by law.

1690 (26) "Unit owner," ~~or~~ "owner of a unit," or "shareholder"
 1691 means the person holding a share in the cooperative association
 1692 and a lease or other muniment of title or possession of a unit
 1693 that is granted by the association as the owner of the
 1694 cooperative property.

1695 Section 14. Section 719.104, Florida Statutes, is amended
 1696 to read:

1697 719.104 The association ~~Cooperatives; access to units;~~
 1698 ~~records; financial reports; assessments; purchase of leases.--~~

1699 (1) RIGHT OF ACCESS TO UNITS.--The association has the
 1700 irrevocable right of access to each unit from time to time
 1701 during reasonable hours when necessary for the maintenance,
 1702 repair, or replacement of any structural components of the
 1703 building or of any mechanical, electrical, or plumbing elements
 1704 necessary to prevent damage to the building or to another unit.
 1705 Except in cases of emergency, the association must give the
 1706 shareholder advance written notice of not less than 24 hours of
 1707 its intent to access the unit and such access must be by two
 1708 persons, one of whom must be a member of the board of

1709 administration or a manager or employee of the association and
 1710 one of whom must be an authorized representative of the
 1711 association. The identity of the authorized representative
 1712 seeking access to the unit shall be provided to the unit owner
 1713 prior to entering the unit.

1714 (2) OFFICIAL RECORDS.--

1715 (a) From the inception of the association, the association
 1716 shall maintain a copy of each of the following, where
 1717 applicable, which shall constitute the official records of the
 1718 association:

1719 1. The plans, permits, warranties, and other items
 1720 provided by the developer pursuant to s. 719.301(4).

1721 2. A photocopy of the cooperative documents.

1722 3. A copy of the current rules of the association.

1723 4. A book or books containing the minutes of all meetings
 1724 of the association, of the board of directors, and of the
 1725 shareholders ~~unit owners~~, which minutes shall be retained for a
 1726 period of not less than 7 years.

1727 5. A current roster of all shareholders ~~unit owners~~ and
 1728 their mailing addresses, unit identifications, voting
 1729 certifications, and, if known, telephone numbers. The
 1730 association shall also maintain the electronic mailing addresses
 1731 and the numbers designated by shareholders ~~unit owners~~ for
 1732 receiving notice sent by electronic transmission of those
 1733 shareholders ~~unit owners~~ consenting to receive notice by
 1734 electronic transmission. The electronic mailing addresses and
 1735 numbers provided by shareholders ~~unit owners~~ to receive notice
 1736 by electronic transmission shall be removed from association

1737 records when consent to receive notice by electronic
1738 transmission is revoked. However, the association is not liable
1739 for an erroneous disclosure of the electronic mail address or
1740 the number for receiving electronic transmission of notices.

1741 6. All current insurance policies of the association.

1742 7. A current copy of any management agreement, lease, or
1743 other contract to which the association is a party or under
1744 which the association or the shareholders ~~unit owners~~ have an
1745 obligation or responsibility.

1746 8. Bills of sale or transfer for all property owned by the
1747 association.

1748 9. Accounting records for the association and separate
1749 accounting records for each unit it operates, according to good
1750 accounting practices. Any person who knowingly or intentionally
1751 defaces or destroys accounting records required to be maintained
1752 by this chapter, or who knowingly or intentionally fails to
1753 create or maintain accounting records required to be maintained
1754 by this chapter, is personally subject to a civil penalty
1755 pursuant to s. 719.501(1)(d). All accounting records shall be
1756 maintained for a period of not less than 7 years. The accounting
1757 records shall include, but not be limited to:

1758 a. Accurate, itemized, and detailed records of all
1759 receipts and expenditures.

1760 b. A current account and a monthly, bimonthly, or
1761 quarterly statement of the account for each unit designating the
1762 name of the shareholder ~~unit owner~~, the due date and amount of
1763 each assessment, the amount paid upon the account, and the
1764 balance due.

1765 c. All audits, reviews, accounting statements, and
 1766 financial reports of the association.

1767 d. All contracts for work to be performed. Bids for work
 1768 to be performed shall also be considered official records and
 1769 shall be maintained ~~for a period of 1 year~~.

1770 10. Ballots, sign-in sheets, voting proxies, and all other
 1771 papers relating to voting by shareholders ~~unit owners~~, which
 1772 shall be maintained for a period of 1 year after the date of the
 1773 election, vote, or meeting to which the document relates.

1774 11. All rental records where the association is acting as
 1775 agent for the rental of units.

1776 12. A copy of the current question and answer sheet as
 1777 described in s. 719.504.

1778 13. All other records of the association not specifically
 1779 included in the foregoing which are related to the operation of
 1780 the association.

1781 (b) The official records of the association shall be
 1782 maintained within the state for at least 7 years. The records of
 1783 the association shall be made available to a shareholder ~~unit~~
 1784 ~~owner~~ within 5 working days after receipt of written request by
 1785 the board or its designee. This paragraph may be complied with
 1786 by having a copy of the official records available for
 1787 inspection or copying on the cooperative property.

1788 (c) The official records of the association shall be open
 1789 to inspection by any association member or the authorized
 1790 representative of such member at all reasonable times. Failure
 1791 to permit inspection of the association records as provided
 1792 herein entitles any person prevailing in an enforcement action

1793 | to recover reasonable attorney's fees from the person in control
 1794 | of the records who, directly or indirectly, knowingly denies
 1795 | access to the records for inspection. The right to inspect the
 1796 | records includes the right to make or obtain copies, at the
 1797 | reasonable expense, if any, of the association member. The
 1798 | association may adopt reasonable rules regarding the frequency,
 1799 | time, location, notice, and manner of record inspections and
 1800 | copying. The failure of an association to provide the records
 1801 | within 10 working days after receipt of a written request
 1802 | creates a rebuttable presumption that the association willfully
 1803 | failed to comply with this paragraph. A shareholder ~~unit owner~~
 1804 | who is denied access to official records is entitled to the
 1805 | actual damages or minimum damages for the association's willful
 1806 | failure to comply with this paragraph. The minimum damages shall
 1807 | be \$50 per calendar day up to 10 days, the calculation to begin
 1808 | on the 11th day after receipt of the written request. Any person
 1809 | who knowingly or intentionally defaces or destroys records that
 1810 | are required by this chapter, or knowingly or intentionally
 1811 | fails to create or maintain records that are required by this
 1812 | chapter, is personally subject to a civil penalty pursuant to s.
 1813 | 719.501(1)(d). The association shall maintain an adequate number
 1814 | of copies of the declaration, articles of incorporation, bylaws,
 1815 | and rules, and all amendments to each of the foregoing, as well
 1816 | as the question and answer sheet provided for in s. 719.504, on
 1817 | the cooperative property to ensure their availability to
 1818 | shareholders ~~unit owners~~ and prospective purchasers, and may
 1819 | charge its actual costs for preparing and furnishing these
 1820 | documents to those requesting the same. Notwithstanding the

1821 provisions of this paragraph, the following records shall not be
 1822 accessible to shareholders ~~unit owners~~:

1823 1. A record that was prepared by an association attorney
 1824 or prepared at the attorney's express direction; that reflects a
 1825 mental impression, conclusion, litigation strategy, or legal
 1826 theory of the attorney or the association; or that was prepared
 1827 exclusively for civil or criminal litigation or for adversarial
 1828 administrative proceedings or in anticipation of imminent civil
 1829 or criminal litigation or imminent adversarial administrative
 1830 proceedings, until the conclusion of the litigation or
 1831 adversarial administrative proceedings.

1832 2. Information obtained by an association in connection
 1833 with the approval of the lease, sale, or other transfer of a
 1834 unit.

1835 3. Medical records of shareholders ~~unit owners~~.

1836 4. Social security numbers, driver's license numbers,
 1837 credit card numbers, and other personal identifying information
 1838 of any person.

1839 (d) The association or its authorized agent shall not be
 1840 required to provide a prospective purchaser or lienholder with
 1841 information about the cooperative or association other than the
 1842 information or documents required by this chapter to be made
 1843 available or disclosed. The association or its authorized agent
 1844 shall be entitled to charge a reasonable fee to the prospective
 1845 purchaser, lienholder, or the current shareholder ~~unit owner~~ for
 1846 its time in providing good faith responses to requests for
 1847 information by or on behalf of a prospective purchaser or
 1848 lienholder, other than that required by law, provided that such

CS/HB 1397

2009

1849 fee shall not exceed \$150 plus the reasonable cost of
1850 photocopying and any attorney's fees incurred by the association
1851 in connection with the association's response. An association
1852 and its authorized agent are not liable for providing such
1853 information in good faith pursuant to a written request if the
1854 person providing the information includes a written statement in
1855 substantially the following form: "The responses herein are made
1856 in good faith and to the best of my ability as to their
1857 accuracy."

1858 (3) INSURANCE.--In order to protect the safety, health,
1859 and welfare of the people of the state and to ensure consistency
1860 in the provision of insurance coverage to cooperatives and their
1861 shareholders, this subsection applies to every residential
1862 cooperative in the state, regardless of the date of its
1863 cooperative documents. It is the intent of the Legislature to
1864 encourage lower or stable insurance premiums for associations
1865 described in this subsection.

1866 (a) Adequate property insurance, regardless of any
1867 requirement in the cooperative documents for coverage by the
1868 association for full insurable value, replacement cost, or
1869 similar coverage, shall be based upon the replacement cost of
1870 the property to be insured as determined by an independent
1871 insurance appraisal or update of a prior appraisal. The full
1872 insurable value shall be determined at least once every 36
1873 months.

1874 1. An association or group of associations may provide
1875 adequate property insurance through a self-insurance fund that
1876 complies with the requirements of ss. 624.460-624.488.

1877 2. The association may also provide adequate property
1878 insurance coverage for a group of no fewer than three
1879 communities created and operating under this chapter, chapter
1880 718, chapter 720, or chapter 721 by obtaining and maintaining
1881 for such communities insurance coverage sufficient to cover an
1882 amount equal to the probable maximum loss for the communities
1883 for a 250-year windstorm event. Such probable maximum loss must
1884 be determined through the use of a competent model that has been
1885 accepted by the Florida Commission on Hurricane Loss Projection
1886 Methodology. No policy or program providing such coverage shall
1887 be issued or renewed after July 1, 2009, unless it has been
1888 reviewed and approved by the Office of Insurance Regulation. The
1889 review and approval shall include approval of the policy and
1890 related forms pursuant to ss. 627.410 and 627.411, approval of
1891 the rates pursuant to s. 627.062, a determination that the loss
1892 model approved by the commission was accurately and
1893 appropriately applied to the insured structures to determine the
1894 250-year probable maximum loss, and a determination that
1895 complete and accurate disclosure of all material provisions is
1896 provided to cooperative shareholders prior to execution of the
1897 agreement by a cooperative association.

1898 3. When determining the adequate amount of property
1899 insurance coverage, the association may consider deductibles as
1900 determined by this subsection.

1901 (b) If an association is a developer-controlled
1902 association, the association shall exercise its best efforts to
1903 obtain and maintain insurance as described in paragraph (a).
1904 Failure to obtain and maintain adequate property insurance

1905 during any period of developer control constitutes a breach of
 1906 fiduciary responsibility by the developer-appointed members of
 1907 the board of directors of the association, unless the members
 1908 can show that despite such failure they have made their best
 1909 efforts to maintain the required coverage.

1910 (c) Policies may include deductibles as determined by the
 1911 board.

1912 1. The deductibles shall be consistent with industry
 1913 standards and prevailing practice for communities of similar
 1914 size and age, and having similar construction and facilities in
 1915 the locale where the cooperative property is situated.

1916 2. The deductibles may be based upon available funds,
 1917 including reserve accounts, or predetermined assessment
 1918 authority at the time the insurance is obtained.

1919 3. The board shall establish the amount of deductibles
 1920 based upon the level of available funds and predetermined
 1921 assessment authority at a meeting of the board. Such meeting
 1922 shall be open to all shareholders in the manner set forth in s.
 1923 719.106(1)(e). The notice of such meeting must state the
 1924 proposed deductible and the available funds and the assessment
 1925 authority relied upon by the board and estimate any potential
 1926 assessment amount against each unit, if any. The meeting
 1927 described in this subparagraph may be held in conjunction with a
 1928 meeting to consider the proposed budget or an amendment thereto.

1929 (d) An association controlled by shareholders operating as
 1930 a residential cooperative shall use its best efforts to obtain
 1931 and maintain adequate insurance to protect the association, the
 1932 association property, the common elements, and the cooperative

1933 property that is required to be insured by the association
 1934 pursuant to this subsection.

1935 (e) An association may also obtain and maintain liability
 1936 insurance for directors and officers, insurance for the benefit
 1937 of association employees, and flood insurance for common
 1938 elements, association property, and units.

1939 (f) Every property insurance policy issued or renewed on
 1940 or after July 1, 2009, for the purpose of protecting the
 1941 cooperative shall provide primary coverage for:

1942 1. All portions of the cooperative property as originally
 1943 installed or replacement of like kind and quality, in accordance
 1944 with the original plans and specifications.

1945 2. All alterations or additions made to the cooperative
 1946 property or association property pursuant to s. 719.113(2).

1947
 1948 The coverage shall exclude all personal property within the
 1949 unit, and floor, wall, and ceiling coverings, electrical
 1950 fixtures, appliances, water heaters, water filters, built-in
 1951 cabinets and countertops, air-conditioning and heating equipment
 1952 that serves a single unit, and window treatments, including
 1953 curtains, drapes, blinds, hardware, and similar window treatment
 1954 components, or replacements of any of the foregoing. Such
 1955 property and insurance therefore shall be the responsibility of
 1956 the shareholder.

1957 (g) A cooperative shareholders policy issued after July 1,
 1958 2009, shall conform to the requirements of s. 627.714.

1959 1. All reconstruction work after a casualty loss shall be
 1960 undertaken by the association except as otherwise authorized in

1961 this section. A shareholder may undertake reconstruction work on
 1962 portions of the unit with the prior written consent of the board
 1963 of directors. However, such work may be conditioned upon the
 1964 approval of the repair methods, the qualifications of the
 1965 proposed contractor, or the contract that is used for that
 1966 purpose. A shareholder shall obtain all required governmental
 1967 permits and approvals prior to commencing reconstruction.

1968 2. Shareholders are responsible for the cost of
 1969 reconstruction of any portions of the cooperative property for
 1970 which the association does not carry property insurance, and any
 1971 such reconstruction work undertaken by the association shall be
 1972 chargeable to the shareholder and enforceable as an assessment
 1973 pursuant to s. 719.108.

1974 (h) The association shall maintain insurance or fidelity
 1975 bonding of all persons who control or disburse funds of the
 1976 association. The insurance policy or fidelity bond must cover
 1977 the maximum funds that will be in the custody of the association
 1978 or its management agent at any one time. As used in this
 1979 paragraph, the term "persons who control or disburse funds of
 1980 the association" includes, but is not limited to, those
 1981 individuals authorized to sign checks on behalf of the
 1982 association, and the president, secretary, and treasurer of the
 1983 association. The association shall bear the cost of any such
 1984 bonding.

1985 (i) The association may amend the cooperative documents
 1986 without regard to any requirement for approval by mortgagees of
 1987 amendments affecting insurance requirements for the purpose of
 1988 conforming the cooperative documents to the coverage

1989 requirements of this subsection.

1990 (j) Any portion of the cooperative property required to be
 1991 insured by the association against casualty loss pursuant to
 1992 paragraph (f) which is damaged by casualty shall be
 1993 reconstructed, repaired, or replaced as necessary by the
 1994 association as a common expense. All property insurance
 1995 deductibles, uninsured losses, and other damages in excess of
 1996 property insurance coverage under the property insurance
 1997 policies maintained by the association are a common expense of
 1998 the cooperative, except that:

1999 1. A shareholder is responsible for the costs of repair or
 2000 replacement of any portion of the cooperative property not paid
 2001 by insurance proceeds, if such damage is caused by intentional
 2002 conduct, negligence, or failure to comply with the terms of the
 2003 declaration or the rules of the association by a shareholder,
 2004 the members of his or her family, unit occupants, tenants,
 2005 guests, or invitees.

2006 2. The provisions of subparagraph 1. regarding the
 2007 financial responsibility of a shareholder for the costs of
 2008 repairing or replacing other portions of the cooperative
 2009 property also apply to the costs of repair or replacement of
 2010 personal property of other shareholders or the association, as
 2011 well as other property, whether real or personal, which the
 2012 shareholders are required to insure under paragraph (g).

2013 3. To the extent the cost of repair or reconstruction for
 2014 which the shareholder is responsible under this paragraph is
 2015 reimbursed to the association by insurance proceeds, and, to the
 2016 extent the association has collected the cost of such repair or

2017 reconstruction from the shareholder, the association shall
 2018 reimburse the shareholder.

2019 4. The association is not obligated to pay for repair or
 2020 reconstruction or repairs of casualty losses as a common expense
 2021 if the casualty losses were known or should have been known to a
 2022 shareholder and were not reported to the association until after
 2023 the insurance claim of the association for that casualty was
 2024 settled or resolved with finality, or denied on the basis that
 2025 it was untimely filed.

2026 (k) An association may, upon the approval of a majority of
 2027 the total voting interests in the association, opt out of the
 2028 provisions of paragraph (j) for the allocation of repair or
 2029 reconstruction expenses and allocate repair or reconstruction
 2030 expenses in the manner provided in the cooperative documents
 2031 originally recorded or as amended. Such vote may be approved by
 2032 the voting interests of the association without regard to any
 2033 mortgagee consent requirements.

2034 (l) Any association or cooperative voting to opt out of
 2035 the guidelines for repair or reconstruction expenses as
 2036 described in paragraph (j) must record a notice setting forth
 2037 the date of the opt-out vote and the page of the official
 2038 records book on which the cooperative documents are recorded.
 2039 The decision to opt out is effective upon the date of recording
 2040 of the notice in the public records by the association. An
 2041 association that has voted to opt out of paragraph (j) may
 2042 reverse that decision by the same vote required in paragraph
 2043 (k), and notice thereof shall be recorded in the official
 2044 records.

2045 (m) The association is not obligated to pay for any
 2046 reconstruction or repair expenses due to casualty loss to any
 2047 improvements installed by a current or former owner of the unit
 2048 or by the developer if the improvement benefits only the unit
 2049 for which it was installed and is not part of the standard
 2050 improvements installed by the developer on all units as part of
 2051 original construction, whether or not such improvement is
 2052 located within the unit. This paragraph does not relieve any
 2053 party of its obligations regarding recovery due under any
 2054 insurance implemented specifically for any such improvements.
 2055 ~~The association shall use its best efforts to obtain and~~
 2056 ~~maintain adequate insurance to protect the association property.~~
 2057 ~~The association may also obtain and maintain liability insurance~~
 2058 ~~for directors and officers, insurance for the benefit of~~
 2059 ~~association employees, and flood insurance. A copy of each~~
 2060 ~~policy of insurance in effect shall be made available for~~
 2061 ~~inspection by unit owners at reasonable times.~~
 2062 ~~(a) Windstorm insurance coverage for a group of no fewer~~
 2063 ~~than three communities created and operating under chapter 718,~~
 2064 ~~this chapter, chapter 720, or chapter 721 may be obtained and~~
 2065 ~~maintained for the communities if the insurance coverage is~~
 2066 ~~sufficient to cover an amount equal to the probable maximum loss~~
 2067 ~~for the communities for a 250-year windstorm event. Such~~
 2068 ~~probable maximum loss must be determined through the use of a~~
 2069 ~~competent model that has been accepted by the Florida Commission~~
 2070 ~~on Hurricane Loss Projection Methodology. Such insurance~~
 2071 ~~coverage is deemed adequate windstorm insurance for the purposes~~
 2072 ~~of this section.~~

2073 ~~(b) An association or group of associations may self-~~
2074 ~~insure against claims against the association, the association~~
2075 ~~property, and the cooperative property required to be insured by~~
2076 ~~an association, upon compliance with the applicable provisions~~
2077 ~~of ss. 624.460-624.488, which shall be considered adequate~~
2078 ~~insurance for purposes of this section.~~

2079 (4) FINANCIAL REPORTING REPORT.--Within 90 days after the
2080 end of the fiscal year, or annually on a date provided in the
2081 bylaws, the association shall prepare and complete, or contract
2082 for the preparation and completion of, a financial report for
2083 the preceding fiscal year. Within 21 days after the final
2084 financial report is completed by the association or received
2085 from the third party, but not later than 120 days after the end
2086 of the fiscal year or other date as provided in the bylaws, the
2087 association shall mail to each shareholder at the address last
2088 furnished to the association by the shareholder, or hand deliver
2089 to each shareholder, a copy of the financial report or a notice
2090 that a copy of the financial report will be mailed or hand
2091 delivered to the shareholder, without charge, upon receipt of a
2092 written request from the shareholder. The division shall adopt
2093 rules setting forth uniform accounting principles and standards
2094 to be used by all associations. The rules shall include, but not
2095 be limited to, uniform accounting principles and standards for
2096 stating the disclosure of at least a summary of the reserves,
2097 including information as to whether such reserves are being
2098 funded at a level sufficient to prevent the need for a special
2099 assessment and, if not, the amount of assessments necessary to
2100 bring the reserves up to the level necessary to avoid a special

2101 assessment. The person preparing the financial reports shall be
 2102 entitled to rely on an inspection report prepared for or
 2103 provided to the association to meet the fiscal and fiduciary
 2104 standards of this chapter. In adopting such rules, the division
 2105 shall consider the number of members and annual revenues of an
 2106 association. Financial reports shall be prepared as follows:

2107 (a) An association that meets the criteria of this
 2108 paragraph shall prepare or cause to be prepared a complete set
 2109 of financial statements in accordance with generally accepted
 2110 accounting principles. The financial statements shall be based
 2111 upon the association's total annual revenues, as follows:

2112 1. An association with total annual revenues of \$100,000
 2113 or more, but less than \$200,000, shall prepare compiled
 2114 financial statements.

2115 2. An association with total annual revenues of at least
 2116 \$200,000, but less than \$400,000, shall prepare reviewed
 2117 financial statements.

2118 3. An association with total annual revenues of \$400,000
 2119 or more shall prepare audited financial statements.

2120 (b)1. An association with total annual revenues of less
 2121 than \$100,000 shall prepare a report of cash receipts and
 2122 expenditures.

2123 2. An association which operates less than 50 units,
 2124 regardless of the association's annual revenues, shall prepare a
 2125 report of cash receipts and expenditures in lieu of financial
 2126 statements required by paragraph (a).

2127 3. A report of cash receipts and disbursements must
 2128 disclose the amount of receipts by accounts and receipt

2129 classifications and the amount of expenses by accounts and
 2130 expense classifications, including, but not limited to, the
 2131 following, as applicable: costs for security, professional and
 2132 management fees and expenses, taxes, costs for recreation
 2133 facilities, expenses for refuse collection and utility services,
 2134 expenses for lawn care, costs for building maintenance and
 2135 repair, insurance costs, administration and salary expenses, and
 2136 reserves accumulated and expended for capital expenditures,
 2137 deferred maintenance, and any other category for which the
 2138 association maintains reserves.

2139 (c) An association may prepare or cause to be prepared,
 2140 without a meeting of or approval by the shareholders:

2141 1. Compiled, reviewed, or audited financial statements, if
 2142 the association is required to prepare a report of cash receipts
 2143 and expenditures;

2144 2. Reviewed or audited financial statements, if the
 2145 association is required to prepare compiled financial
 2146 statements; or

2147 3. Audited financial statements, if the association is
 2148 required to prepare reviewed financial statements.

2149 (d) If approved by a majority of the voting interests
 2150 present at a properly called meeting of the association, an
 2151 association may prepare or cause to be prepared:

2152 1. A report of cash receipts and expenditures in lieu of a
 2153 compiled, reviewed, or audited financial statement;

2154 2. A report of cash receipts and expenditures or a
 2155 compiled financial statement in lieu of a reviewed or audited
 2156 financial statement; or

2157 3. A report of cash receipts and expenditures, a compiled
2158 financial statement, or a reviewed financial statement in lieu
2159 of an audited financial statement.

2160
2161 Such meeting and approval must occur prior to the end of the
2162 fiscal year and is effective only for the fiscal year in which
2163 the vote is taken, except that the approval also may be
2164 effective for the following fiscal year. With respect to an
2165 association to which the developer has not turned over control
2166 of the association, all shareholders, including the developer,
2167 may vote on issues related to the preparation of financial
2168 reports for the first 2 fiscal years of the association's
2169 operation, beginning with the fiscal year in which the
2170 declaration is recorded. Thereafter, all shareholders except the
2171 developer may vote on such issues until control is turned over
2172 to the association by the developer. Any audit or review
2173 prepared under this section shall be paid for by the developer
2174 if done prior to turnover of control of the association. An
2175 association may not waive the financial reporting requirements
2176 of this subsection for more than 3 consecutive years.

2177 ~~(a) Within 60 days following the end of the fiscal or~~
2178 ~~calendar year or annually on such date as is otherwise provided~~
2179 ~~in the bylaws of the association, the board of administration of~~
2180 ~~the association shall mail or furnish by personal delivery to~~
2181 ~~each unit owner a complete financial report of actual receipts~~
2182 ~~and expenditures for the previous 12 months, or a complete set~~
2183 ~~of financial statements for the preceding fiscal year prepared~~
2184 ~~in accordance with generally accepted accounting procedures. The~~

2185 ~~report shall show the amounts of receipts by accounts and~~
 2186 ~~receipt classifications and shall show the amounts of expenses~~
 2187 ~~by accounts and expense classifications including, if~~
 2188 ~~applicable, but not limited to, the following:~~

- 2189 ~~1. Costs for security;~~
- 2190 ~~2. Professional and management fees and expenses;~~
- 2191 ~~3. Taxes;~~
- 2192 ~~4. Costs for recreation facilities;~~
- 2193 ~~5. Expenses for refuse collection and utility services;~~
- 2194 ~~6. Expenses for lawn care;~~
- 2195 ~~7. Costs for building maintenance and repair;~~
- 2196 ~~8. Insurance costs;~~
- 2197 ~~9. Administrative and salary expenses; and~~
- 2198 ~~10. Reserves for capital expenditures, deferred~~
 2199 ~~maintenance, and any other category for which the association~~
 2200 ~~maintains a reserve account or accounts.~~

2201 ~~(b) The division shall adopt rules that may require that~~
 2202 ~~the association deliver to the unit owners, in lieu of the~~
 2203 ~~financial report required by this section, a complete set of~~
 2204 ~~financial statements for the preceding fiscal year. The~~
 2205 ~~financial statements shall be delivered within 90 days following~~
 2206 ~~the end of the previous fiscal year or annually on such other~~
 2207 ~~date as provided in the bylaws. The rules of the division may~~
 2208 ~~require that the financial statements be compiled, reviewed, or~~
 2209 ~~audited, and the rules shall take into consideration the~~
 2210 ~~criteria set forth in s. 719.501(1)(j). The requirement to have~~
 2211 ~~the financial statements compiled, reviewed, or audited does not~~
 2212 ~~apply to associations if a majority of the voting interests of~~

2213 ~~the association present at a duly called meeting of the~~
 2214 ~~association have determined for a fiscal year to waive this~~
 2215 ~~requirement. In an association in which turnover of control by~~
 2216 ~~the developer has not occurred, the developer may vote to waive~~
 2217 ~~the audit requirement for the first 2 years of the operation of~~
 2218 ~~the association, after which time waiver of an applicable audit~~
 2219 ~~requirement shall be by a majority of voting interests other~~
 2220 ~~than the developer. The meeting shall be held prior to the end~~
 2221 ~~of the fiscal year, and the waiver shall be effective for only~~
 2222 ~~one fiscal year. This subsection does not apply to a cooperative~~
 2223 ~~that consists of 50 or fewer units.~~

2224 (5) ASSESSMENTS.--The association has the power to make
 2225 and collect assessments and to lease, maintain, repair, and
 2226 replace the common areas. However, the association may not
 2227 charge a use fee against a shareholder ~~the unit owner~~ for the
 2228 use of common areas unless otherwise provided for in the
 2229 cooperative documents or by a majority vote of the association
 2230 or unless the charges relate to expenses incurred by a
 2231 shareholder ~~an owner~~ having exclusive use of common areas.

2232 (6) PURCHASE OF LEASES.--The association has the power to
 2233 purchase any land or recreation lease upon the approval of such
 2234 voting interest as is required by the cooperative documents. If
 2235 the cooperative documents make no provision for acquisition of
 2236 the land or recreational lease, the vote required is that
 2237 required to amend the cooperative documents to permit the
 2238 acquisition.

2239 (7) COMMINGLING.--All funds shall be maintained separately
 2240 in the association's name. Reserve and operating funds of the

2241 association shall not be commingled unless combined for
 2242 investment purposes. This subsection is not meant to prohibit
 2243 prudent investment of association funds even if combined with
 2244 operating or other reserve funds of the same association, but
 2245 such funds must be accounted for separately, and the combined
 2246 account balance may not, at any time, be less than the amount
 2247 identified as reserve funds in the combined account. No manager
 2248 or business entity required to be licensed or registered under
 2249 s. 468.432, or an agent, employee, officer, or director of a
 2250 cooperative association may commingle any association funds with
 2251 his or her own funds or with the funds of any other cooperative
 2252 association or community association as defined in s. 468.431.

2253 (8) CORPORATE ENTITY.--

2254 (a) The operation of the cooperative shall be by the
 2255 association, which must be a Florida corporation not for profit.
 2256 The shareholders shall be members of the association. The
 2257 officers and directors of the association have a fiduciary
 2258 relationship to the shareholders ~~unit-owners~~. It is the intent
 2259 of the Legislature that nothing in this paragraph shall be
 2260 construed as providing for or removing a requirement of a
 2261 fiduciary relationship between any manager employed by the
 2262 association and the shareholders. An officer, director, or
 2263 manager may not solicit, offer to accept, or accept any thing or
 2264 service of value for which consideration has not been provided
 2265 for his or her own benefit or that of his or her immediate
 2266 family, from any person providing or proposing to provide goods
 2267 or services to the association. Any such officer, director, or
 2268 manager who knowingly solicits, offers to accept, or accepts any

2269 | thing or service of value is subject to a civil penalty pursuant
 2270 | to s. 719.501(1)(d). However, this paragraph does not prohibit
 2271 | an officer, director, or manager from accepting services or
 2272 | items received in connection with trade fairs or education
 2273 | programs.

2274 | (b) A director of the association who is present at a
 2275 | meeting of its board at which action on any corporate matter is
 2276 | taken is presumed to have assented to the action taken unless
 2277 | the director votes against such action or abstains from voting
 2278 | ~~in respect thereto because of an asserted conflict of interest.~~
 2279 | A director of the association who abstains from voting on any
 2280 | action taken on any corporate matter shall be presumed to have
 2281 | taken no position with regard to the action. Directors may not
 2282 | vote by proxy or by secret ballot at board meetings, except that
 2283 | officers may be elected by secret ballot. A vote or abstention
 2284 | for each member present shall be recorded in the minutes.

2285 | (c) A shareholder ~~unit owner~~ does not have any authority
 2286 | to act for the association by reason of being a shareholder ~~unit~~
 2287 | ~~owner~~.

2288 | (d) As required by s. 617.0830, an officer, director, or
 2289 | agent shall discharge his or her duties in good faith, with the
 2290 | care an ordinarily prudent person in a like position would
 2291 | exercise under similar circumstances, and in a manner he or she
 2292 | reasonably believes to be in the interests of the association.
 2293 | An officer, director, or agent shall be liable for monetary
 2294 | damages as provided in s. 617.0834 if such officer, director, or
 2295 | agent breached or failed to perform his or her duties and the
 2296 | breach of, or failure to perform, his or her duties constitutes

2297 a violation of criminal law as provided in s. 617.0834;
 2298 constitutes a transaction from which the officer or director
 2299 derived an improper personal benefit, either directly or
 2300 indirectly; or constitutes recklessness or an act or omission
 2301 that was in bad faith, with malicious purpose, or in a manner
 2302 exhibiting wanton and willful disregard of human rights, safety,
 2303 or property.

2304 (9) EASEMENTS.--Unless prohibited by the cooperative
 2305 documents, the board of administration has the authority,
 2306 without the joinder of any shareholder ~~unit owner~~, to grant,
 2307 modify, or move any easement, if the easement constitutes part
 2308 of or crosses the common areas or association property. This
 2309 subsection does not authorize the board of administration to
 2310 modify, move, or vacate any easement created in whole or in part
 2311 for the use or benefit of anyone other than the shareholders
 2312 ~~unit owners~~, or crossing the property of anyone other than the
 2313 shareholders ~~unit owners~~, without the consent or approval of
 2314 those other persons having the use or benefit of the easement,
 2315 as required by law or by the instrument creating the easement.

2316 (10) POWERS AND DUTIES.--The powers and duties of the
 2317 association include those set forth in this section and, except
 2318 as expressly limited or restricted in this chapter, those set
 2319 forth in the articles of incorporation and bylaws and chapters
 2320 607 and 617, as applicable.

2321 (11) NOTIFICATION OF DIVISION.--When the board of
 2322 directors intends to dissolve or merge the cooperative
 2323 association, the board shall so notify the division before
 2324 taking any action to dissolve or merge the cooperative

2325 association.

2326 (12) POWER TO MANAGE COOPERATIVE PROPERTY AND TO CONTRACT,
 2327 SUE, BE SUED, AND BORROW MONEY.--

2328 (a) The association may contract, sue, or be sued with
 2329 respect to the exercise or nonexercise of its powers. For these
 2330 purposes, the powers of the association include, but are not
 2331 limited to, the maintenance, management, and operation of the
 2332 cooperative property.

2333 (b) After control of the association is obtained by
 2334 shareholders other than the developer, the association may
 2335 institute, maintain, settle, or appeal actions or hearings in
 2336 its name on behalf of all shareholders concerning matters of
 2337 common interest to most or all shareholders, including, but not
 2338 limited to, the common areas; the roof and structural components
 2339 of a building or other improvements; mechanical, electrical, and
 2340 plumbing elements serving an improvement or a building;
 2341 representations of the developer pertaining to any existing or
 2342 proposed commonly used facilities; and protesting ad valorem
 2343 taxes on commonly used facilities and units; and the association
 2344 may defend actions in eminent domain or bring inverse
 2345 condemnation actions.

2346 (c) If the association has the authority to maintain a
 2347 class action, the association may be joined in an action as
 2348 representative of that class with reference to litigation and
 2349 disputes involving the matters for which the association could
 2350 bring a class action. Nothing herein limits any statutory or
 2351 common-law right of any individual shareholder or class of
 2352 shareholders to bring any action without participation by the

2353 association which may otherwise be available.
 2354 (d) The borrowing of funds or committing to a line of
 2355 credit by the board of administration shall be considered a
 2356 special assessment, and any meeting of the board of
 2357 administration to discuss such matters shall be noticed in the
 2358 same manner as provided in s. 719.106(1)(c). The board shall not
 2359 have the authority to enter in a line of credit or borrow funds
 2360 for any purpose unless the specific use of the funds from the
 2361 line of credit or loan is set forth in the notice of meeting
 2362 with the same specificity as required for a special assessment
 2363 or unless the borrowing or line of credit has received the prior
 2364 approval of not less than two-thirds of the voting interests of
 2365 the association.

2366 (13) TITLE TO PROPERTY.--

2367 (a) The association has the power to acquire title to
 2368 property or otherwise hold, convey, lease, and mortgage
 2369 association property for the use and benefit of its
 2370 shareholders. The power to acquire personal property shall be
 2371 exercised by the board of directors. Except as otherwise
 2372 provided in subsections (6) and (14), no association may
 2373 acquire, convey, lease, or mortgage association real property
 2374 except in the manner provided in the cooperative documents, and
 2375 if the cooperative documents do not specify the procedure, then
 2376 approval of 75 percent of the total voting interests shall be
 2377 required.

2378 (b) Subject to the provisions of s. 719.106(1)(m), the
 2379 association, through its board, has the limited power to convey
 2380 a portion of the common areas to a condemning authority for the

2381 purposes of providing utility easements, right-of-way expansion,
 2382 or other public purposes, whether negotiated or as a result of
 2383 eminent domain proceedings.

2384 (14) PURCHASE OF UNITS.--The association has the power,
 2385 unless prohibited by the cooperative documents, to purchase
 2386 units in the cooperative and to acquire and hold, lease,
 2387 mortgage, and convey the units. There shall be no limitation on
 2388 the association's right to purchase a unit at a foreclosure sale
 2389 resulting from the association's foreclosure of its lien for
 2390 unpaid assessments, or to take title by deed in lieu of
 2391 foreclosure.

2392 (15) MEETINGS.--Regular meetings of the board of directors
 2393 shall be held at such time and place as provided in the bylaws
 2394 until the first regular meeting of the board held on or after
 2395 October 1, 2009. Thereafter, the location and time for regular
 2396 meetings of the board shall be determined by a majority vote of
 2397 the shareholders at the next regular meeting held on or after
 2398 October 1, 2009. Once the time and place for regular meetings of
 2399 the board have been selected, neither may be changed unless
 2400 approved by a majority vote of the shareholders. Regular
 2401 meetings of the board of directors held on weekdays shall be
 2402 held no earlier than 6 p.m. local time.

2403 (16) LIMIT ON EXPENDITURES.--It shall be unlawful for an
 2404 association to make any expenditure of association funds or to
 2405 make any in-kind contribution of association assets that does
 2406 not relate to the purposes for which the association is
 2407 organized.

2408 (a) The association shall not make any contribution to a

2409 campaign or committee of continuous existence governed by
 2410 chapter 105 or chapter 106.

2411 (b) The association shall not make any contribution to a
 2412 charitable organization if the association does not receive a
 2413 direct benefit from the organization.

2414 (c) The association shall not make any expenditure in
 2415 order to retain a person or firm for the purposes of lobbying.

2416 (d) Members of the board shall be jointly and severally
 2417 liable to reimburse the association for any contribution,
 2418 expenditure, or in-kind contribution made in violation of this
 2419 subsection.

2420 Section 15. Section 719.106, Florida Statutes, is amended
 2421 to read:

2422 719.106 Bylaws; cooperative ownership.--

2423 (1) MANDATORY PROVISIONS.--The bylaws or other cooperative
 2424 documents shall provide for the following, and if they do not,
 2425 they shall be deemed to include the following:

2426 (a) Administration.--

2427 1. The form of administration of the association shall be
 2428 described, indicating the titles of the officers and board of
 2429 administration and specifying the powers, duties, manner of
 2430 selection and removal, and compensation, if any, of officers and
 2431 board members. In the absence of such a provision, the board of
 2432 administration shall be composed of five members, except in the
 2433 case of cooperatives having five or fewer units, in which case
 2434 in not-for-profit corporations, the board shall consist of not
 2435 fewer than three members. In the absence of provisions to the
 2436 contrary, the board of administration shall have a president, a

CS/HB 1397

2009

2437 secretary, and a treasurer, who shall perform the duties of
2438 those offices customarily performed by officers of corporations.
2439 Unless prohibited in the bylaws, the board of administration may
2440 appoint other officers and grant them those duties it deems
2441 appropriate. Unless otherwise provided in the bylaws, the
2442 officers shall serve without compensation and at the pleasure of
2443 the board. Unless otherwise provided in the bylaws, the members
2444 of the board shall serve without compensation.

2445 2. When a shareholder ~~unit owner~~ files a written inquiry
2446 by certified mail with the board of administration, the board
2447 shall respond in writing to the shareholder ~~unit owner~~ within 30
2448 days of receipt of the inquiry. The board's response shall
2449 either give a substantive response to the inquirer, notify the
2450 inquirer that a legal opinion has been requested, or notify the
2451 inquirer that advice has been requested from the division. If
2452 the board requests advice from the division, the board shall,
2453 within 10 days of its receipt of the advice, provide in writing
2454 a substantive response to the inquirer. If a legal opinion is
2455 requested, the board shall, within 60 days after the receipt of
2456 the inquiry, provide in writing a substantive response to the
2457 inquirer. The failure to provide a substantive response to the
2458 inquirer as provided herein precludes the board from recovering
2459 attorney's fees and costs in any subsequent litigation,
2460 administrative proceeding, or arbitration arising out of the
2461 inquiry. The association may, through its board of
2462 administration, adopt reasonable rules and regulations regarding
2463 the frequency and manner of responding to the shareholders' ~~unit~~
2464 ~~owners'~~ inquiries, one of which may be that the association is

2465 obligated to respond to only one written inquiry per unit in any
 2466 given 30-day period. In such case, any additional inquiry or
 2467 inquiries must be responded to in the subsequent 30-day period,
 2468 or periods, as applicable.

2469 (b) Quorum; voting requirements; proxies.--

2470 1. Unless otherwise provided in the bylaws, the percentage
 2471 of voting interests required to constitute a quorum at a meeting
 2472 of the members shall be a majority of voting interests, and
 2473 decisions shall be made by owners of a majority of the voting
 2474 interests. Unless otherwise provided in this chapter, or in the
 2475 articles of incorporation, bylaws, or other cooperative
 2476 documents, and except as provided in subparagraph (d)1.,
 2477 decisions shall be made by owners of a majority of the voting
 2478 interests represented at a meeting at which a quorum is present.

2479 2. Except as specifically otherwise provided herein, after
 2480 January 1, 1992, shareholders ~~unit owners~~ may not vote by
 2481 general proxy, but may vote by limited proxies substantially
 2482 conforming to a limited proxy form adopted by the division.
 2483 Limited proxies and general proxies may be used to establish a
 2484 quorum. Limited proxies shall be used for votes taken to waive
 2485 or reduce reserves in accordance with subparagraph (j)2., for
 2486 votes taken to waive the financial reporting requirements of s.
 2487 719.104(4) ~~(b)~~, for votes taken to amend the articles of
 2488 incorporation or bylaws pursuant to this section, and for any
 2489 other matter for which this chapter requires or permits a vote
 2490 of the shareholders ~~unit owners~~. Except as provided in paragraph
 2491 (d), after January 1, 1992, no proxy, limited or general, shall
 2492 be used in the election of board members. General proxies may be

2493 used for other matters for which limited proxies are not
 2494 required, and may also be used in voting for nonsubstantive
 2495 changes to items for which a limited proxy is required and
 2496 given. Notwithstanding the provisions of this section,
 2497 shareholders ~~unit-owners~~ may vote in person at shareholder ~~unit~~
 2498 ~~owner~~ meetings. Nothing contained herein shall limit the use of
 2499 general proxies or require the use of limited proxies or require
 2500 the use of limited proxies for any agenda item or election at
 2501 any meeting of a timeshare cooperative.

2502 3. Any proxy given shall be effective only for the
 2503 specific meeting for which originally given and any lawfully
 2504 adjourned meetings thereof. In no event shall any proxy be valid
 2505 for a period longer than 90 days after the date of the first
 2506 meeting for which it was given. Every proxy shall be revocable
 2507 at any time at the pleasure of the shareholder ~~unit-owner~~
 2508 executing it.

2509 4. A member of the board of administration or a committee
 2510 may submit in writing his or her agreement or disagreement with
 2511 any action taken at a meeting that the member did not attend.
 2512 This agreement or disagreement may not be used as a vote for or
 2513 against the action taken and may not be used for the purposes of
 2514 creating a quorum.

2515 5. When some or all of the board or committee members meet
 2516 by telephone conference, those board or committee members
 2517 attending by telephone conference may be counted toward
 2518 obtaining a quorum and may vote by telephone. A telephone
 2519 speaker shall be utilized so that the conversation of those
 2520 board or committee members attending by telephone may be heard

CS/HB 1397

2009

2521 by the board or committee members attending in person, as well
2522 as by shareholders ~~unit-owners~~ present at a meeting.

2523 (c) Board of administration meetings.--Meetings of the
2524 board of administration at which a quorum of the members is
2525 present shall be open to all shareholders ~~unit-owners~~. Any
2526 shareholder ~~unit-owner~~ may tape record or videotape meetings of
2527 the board of administration. The right to attend such meetings
2528 includes the right to speak at such meetings with reference to
2529 all designated agenda items. The division shall adopt reasonable
2530 rules governing the tape recording and videotaping of the
2531 meeting. The association may adopt reasonable written rules
2532 governing the frequency, duration, and manner of shareholder
2533 ~~unit-owner~~ statements. Adequate notice of all meetings shall be
2534 posted in a conspicuous place upon the cooperative property at
2535 least 48 continuous hours preceding the meeting, except in an
2536 emergency. If 20 percent of the voting interests petition the
2537 board to address an item of business, the board shall at its
2538 next regular board meeting or at a special meeting of the board,
2539 but not later than 60 days after the receipt of the petition,
2540 place the item on the agenda. Any item not included on the
2541 notice may be taken up on an emergency basis by at least a
2542 majority plus one of the members of the board. Such emergency
2543 action shall be noticed and ratified at the next regular meeting
2544 of the board. However, written notice of any meeting at which
2545 nonemergency special assessments, or at which amendment to rules
2546 regarding unit use, will be considered shall be mailed,
2547 delivered, or electronically transmitted to the shareholders
2548 ~~unit-owners~~ and posted conspicuously on the cooperative property

CS/HB 1397

2009

2549 | not less than 14 days prior to the meeting. Evidence of
2550 | compliance with this 14-day notice shall be made by an affidavit
2551 | executed by the person providing the notice and filed among the
2552 | official records of the association. Upon notice to the
2553 | shareholders ~~unit-owners~~, the board shall by duly adopted rule
2554 | designate a specific location on the cooperative property upon
2555 | which all notices of board meetings shall be posted. In lieu of
2556 | or in addition to the physical posting of notice of any meeting
2557 | of the board of administration on the cooperative property, the
2558 | association may, by reasonable rule, adopt a procedure for
2559 | conspicuously posting and repeatedly broadcasting the notice and
2560 | the agenda on a closed-circuit cable television system serving
2561 | the cooperative association. However, if broadcast notice is
2562 | used in lieu of a notice posted physically on the cooperative
2563 | property, the notice and agenda must be broadcast at least four
2564 | times every broadcast hour of each day that a posted notice is
2565 | otherwise required under this section. When broadcast notice is
2566 | provided, the notice and agenda must be broadcast in a manner
2567 | and for a sufficient continuous length of time so as to allow an
2568 | average reader to observe the notice and read and comprehend the
2569 | entire content of the notice and the agenda. Notice of any
2570 | meeting in which regular or special assessments against
2571 | shareholders ~~unit-owners~~ are to be considered for any reason
2572 | shall specifically state ~~contain a statement~~ that assessments
2573 | will be considered, ~~and~~ the nature and description of ~~any~~ such
2574 | assessments, and the proposed cost and percentage amount for
2575 | possible cost overruns as specifically provided for in the
2576 | proposed contract. Meetings of a committee to take final action

2577 on behalf of the board or to make recommendations to the board
 2578 regarding the association budget are subject to the provisions
 2579 of this paragraph. Meetings of a committee that does not take
 2580 final action on behalf of the board or make recommendations to
 2581 the board regarding the association budget are subject to the
 2582 provisions of this section, unless those meetings are exempted
 2583 from this section by the bylaws of the association.

2584 Notwithstanding any other law to the contrary, the requirement
 2585 that board meetings and committee meetings be open to the
 2586 shareholders ~~unit-owners~~ is inapplicable to meetings between the
 2587 board or a committee and the association's attorney, with
 2588 respect to proposed or pending litigation, when the meeting is
 2589 held for the purpose of seeking or rendering legal advice.

2590 (d) Shareholder meetings.--There shall be an annual
 2591 meeting of the shareholders held at the location provided in the
 2592 association bylaws and, if the bylaws are silent as to the
 2593 location, the meeting shall be held within 45 miles of the
 2594 cooperative property. However, such distance requirement does
 2595 not apply to an association governing a timeshare cooperative.
 2596 All members of the board of administration shall be elected at
 2597 the first annual meeting after July 1, 2009, and annually
 2598 thereafter, except that if ~~unless~~ the bylaws provide for
 2599 staggered election terms of no more than 2 years, the
 2600 association board members may serve 2-year staggered terms. If
 2601 no person is interested in or demonstrates an intention to run
 2602 for the position of a board member whose term has expired, such
 2603 board member whose term has expired shall be automatically
 2604 reappointed to the board of administration and need not stand

CS/HB 1397

2009

2605 ~~for reelection or for their election at another meeting.~~ Any
2606 shareholder ~~unit owner~~ desiring to be a candidate for board
2607 membership shall comply with subparagraph 1. The bylaws shall
2608 provide the method for calling meetings, including annual
2609 meetings. Written notice, which notice shall incorporate an
2610 identification of agenda items, shall be given to each
2611 shareholder ~~unit owner~~ at least 14 days prior to the annual
2612 meeting and shall be posted in a conspicuous place on the
2613 cooperative property at least 14 continuous days preceding the
2614 annual meeting. Upon notice to the shareholders ~~unit owners~~, the
2615 board shall by duly adopted rule designate a specific location
2616 on the cooperative property upon which all notice of shareholder
2617 ~~unit owner~~ meetings shall be posted. In lieu of or in addition
2618 to the physical posting of notice of any meeting of the
2619 shareholders on the cooperative property, the association may,
2620 by reasonable rule, adopt a procedure for conspicuously posting
2621 and repeatedly broadcasting the notice and the agenda on a
2622 closed-circuit cable television system serving the cooperative
2623 association. However, if broadcast notice is used in lieu of a
2624 notice posted physically on the cooperative property, the notice
2625 and agenda must be broadcast at least four times every broadcast
2626 hour of each day that a posted notice is otherwise required
2627 under this section. When broadcast notice is provided, the
2628 notice and agenda must be broadcast in a manner and for a
2629 sufficient continuous length of time so as to allow an average
2630 reader to observe the notice and read and comprehend the entire
2631 content of the notice and the agenda. Unless a shareholder ~~unit~~
2632 ~~owner~~ waives in writing the right to receive notice of the

CS/HB 1397

2009

2633 annual meeting, the notice of the annual meeting shall be sent
2634 by mail, hand delivered, or electronically transmitted to each
2635 shareholder ~~unit-owner~~. An officer of the association shall
2636 provide an affidavit or United States Postal Service certificate
2637 of mailing, to be included in the official records of the
2638 association, affirming that notices of the association meeting
2639 were mailed, hand delivered, or electronically transmitted, in
2640 accordance with this provision, to each shareholder ~~unit-owner~~
2641 at the address last furnished to the association.

2642 1. After January 1, 1992, the board of administration
2643 shall be elected by written ballot or voting machine. Proxies
2644 shall in no event be used in electing the board of
2645 administration, either in general elections or elections to fill
2646 vacancies caused by recall, resignation, or otherwise unless
2647 otherwise provided in this chapter. Not less than 60 days before
2648 a scheduled election, the association shall mail, deliver, or
2649 transmit, whether by separate association mailing, delivery, or
2650 electronic transmission or included in another association
2651 mailing, delivery, or electronic transmission, including
2652 regularly published newsletters, to each shareholder ~~unit-owner~~
2653 entitled to vote, a first notice of the date of the election.
2654 Any shareholder ~~unit-owner~~ or other eligible person desiring to
2655 be a candidate for the board of administration shall give
2656 written notice to the association not less than 40 days before a
2657 scheduled election. Together with the written notice and agenda
2658 as set forth in this section, the association shall mail,
2659 deliver, or electronically transmit a second notice of election
2660 to all shareholders ~~unit-owners~~ entitled to vote therein,

CS/HB 1397

2009

2661 together with a ballot which shall list all candidates. Upon
2662 request of a candidate, the association shall include an
2663 information sheet, no larger than 8 1/2 inches by 11 inches,
2664 which must be furnished by the candidate not less than 35 days
2665 prior to the election, to be included with the mailing,
2666 delivery, or electronic transmission of the ballot, with the
2667 costs of mailing, delivery, or transmission and copying to be
2668 borne by the association. The association has no liability for
2669 the contents of the information sheets provided by the
2670 candidates. In order to reduce costs, the association may print
2671 or duplicate the information sheets on both sides of the paper.
2672 The division shall by rule establish voting procedures
2673 consistent with the provisions contained herein, including rules
2674 establishing procedures for giving notice by electronic
2675 transmission and rules providing for the secrecy of ballots.
2676 Elections shall be decided by a plurality of those ballots cast.
2677 There shall be no quorum requirement. However, at least 20
2678 percent of the eligible voters must cast a ballot in order to
2679 have a valid election of members of the board of administration.
2680 No shareholder ~~unit owner~~ shall permit any other person to vote
2681 his or her ballot, and any such ballots improperly cast shall be
2682 deemed invalid. A shareholder ~~unit owner~~ who needs assistance in
2683 casting the ballot for the reasons stated in s. 101.051 may
2684 obtain assistance in casting the ballot. Any shareholder ~~unit~~
2685 ~~owner~~ violating this provision may be fined by the association
2686 in accordance with s. 719.303. The regular election shall occur
2687 on the date of the annual meeting. The provisions of this
2688 subparagraph shall not apply to timeshare cooperatives.

Page 96 of 190

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1397-01-c1

2689 Notwithstanding the provisions of this subparagraph, an election
 2690 and balloting are not required unless more candidates file a
 2691 notice of intent to run or are nominated than vacancies exist on
 2692 the board.

2693 2. Any approval by shareholders ~~unit-owners~~ called for by
 2694 this chapter, or the applicable cooperative documents, shall be
 2695 made at a duly noticed meeting of shareholders ~~unit-owners~~ and
 2696 shall be subject to all requirements of this chapter or the
 2697 applicable cooperative documents relating to shareholder ~~unit~~
 2698 ~~owner~~ decisionmaking, except that shareholders ~~unit-owners~~ may
 2699 take action by written agreement, without meetings, on matters
 2700 for which action by written agreement without meetings is
 2701 expressly allowed by the applicable cooperative documents or any
 2702 Florida statute which provides for the shareholder ~~unit-owner~~
 2703 action.

2704 3. Shareholders ~~Unit-owners~~ may waive notice of specific
 2705 meetings if allowed by the applicable cooperative documents or
 2706 any Florida statute. If authorized by the bylaws, notice of
 2707 meetings of the board of administration, shareholder meetings,
 2708 except shareholder meetings called to recall board members under
 2709 paragraph (f), and committee meetings may be given by electronic
 2710 transmission to shareholders ~~unit-owners~~ who consent to receive
 2711 notice by electronic transmission.

2712 4. Shareholders ~~Unit-owners~~ shall have the right to
 2713 participate in meetings of shareholders ~~unit-owners~~ with
 2714 reference to all designated agenda items. However, the
 2715 association may adopt reasonable rules governing the frequency,
 2716 duration, and manner of shareholder ~~unit-owner~~ participation.

2717 5. Any shareholder ~~unit-owner~~ may tape record or videotape
 2718 meetings of the shareholders ~~unit-owners~~ subject to reasonable
 2719 rules adopted by the division.

2720
 2721 Notwithstanding subparagraphs (b)2. and (d)1., an association of
 2722 10 units or less may, by the affirmative vote of a majority of
 2723 the total voting interests, provide for a different voting and
 2724 election procedure in its bylaws, which vote may be by a proxy
 2725 specifically delineating the different voting and election
 2726 procedures. The different voting and election procedures may
 2727 provide for elections to be conducted by limited or general
 2728 proxy.

2729 (e) Budget procedures.--

2730 1. The board of administration shall mail, hand deliver,
 2731 or electronically transmit to each shareholder ~~unit-owner~~ at the
 2732 address last furnished to the association, a meeting notice and
 2733 copies of the proposed annual budget of common expenses to the
 2734 shareholders ~~unit-owners~~ not less than 14 days prior to the
 2735 meeting at which the budget will be considered. Evidence of
 2736 compliance with this 14-day notice must be made by an affidavit
 2737 executed by an officer of the association or the manager or
 2738 other person providing notice of the meeting and filed among the
 2739 official records of the association. The meeting must be open to
 2740 the shareholders ~~unit-owners~~.

2741 2. If an adopted budget requires assessment against the
 2742 shareholders ~~unit-owners~~ in any fiscal or calendar year which
 2743 exceeds 115 percent of the assessments for the preceding year,
 2744 the board upon written application of 10 percent of the voting

2745 interests to the board, shall call a special meeting of the
 2746 shareholders ~~unit-owners~~ within 30 days, upon not less than 10
 2747 days' written notice to each shareholder ~~unit-owner~~. At the
 2748 special meeting, shareholders ~~unit-owners~~ shall consider and
 2749 enact a budget. Unless the bylaws require a larger vote, the
 2750 adoption of the budget requires a vote of not less than a
 2751 majority of all the voting interests.

2752 3. The board of administration may, in any event, propose
 2753 a budget to the shareholders ~~unit-owners~~ at a meeting of members
 2754 or by writing, and if the budget or proposed budget is approved
 2755 by the shareholders ~~unit-owners~~ at the meeting or by a majority
 2756 of all voting interests in writing, the budget is adopted. If a
 2757 meeting of the shareholders ~~unit-owners~~ has been called and a
 2758 quorum is not attained or a substitute budget is not adopted by
 2759 the shareholders ~~unit-owners~~, the budget adopted by the board of
 2760 directors goes into effect as scheduled.

2761 4. In determining whether assessments exceed 115 percent
 2762 of similar assessments for prior years, any authorized
 2763 provisions for reasonable reserves for repair or replacement of
 2764 cooperative property, anticipated expenses by the association
 2765 which are not anticipated to be incurred on a regular or annual
 2766 basis, or assessments for betterments to the cooperative
 2767 property must be excluded from computation. However, as long as
 2768 the developer is in control of the board of administration, the
 2769 board may not impose an assessment for any year greater than 115
 2770 percent of the prior fiscal or calendar year's assessment
 2771 without approval of a majority of all voting interests.

2772 (f) Recall of board members.--Subject to the provisions of

2773 s. 719.301, any member of the board of administration may be
 2774 recalled and removed from office with or without cause by the
 2775 vote or agreement in writing by a majority of all the voting
 2776 interests. A special meeting of the voting interests to recall
 2777 any member of the board of administration may be called by 10
 2778 percent of the shareholders ~~unit owners~~ giving notice of the
 2779 meeting as required for a meeting of shareholders ~~unit owners~~,
 2780 and the notice shall state the purpose of the meeting.

2781 Electronic transmission may not be used as a method of giving
 2782 notice of a meeting called in whole or in part for this purpose.

2783 1. If the recall is approved by a majority of all voting
 2784 interests by a vote at a meeting, the recall shall be effective
 2785 as provided herein. The board shall duly notice and hold a board
 2786 meeting within 5 full business days of the adjournment of the
 2787 shareholder ~~unit owner~~ meeting to recall one or more board
 2788 members. At the meeting, the board shall either certify the
 2789 recall, in which case such member or members shall be recalled
 2790 effective immediately and shall turn over to the board within 5
 2791 full business days any and all records and property of the
 2792 association in their possession, or shall proceed as set forth
 2793 in subparagraph 3.

2794 2. If the proposed recall is by an agreement in writing by
 2795 a majority of all voting interests, the agreement in writing or
 2796 a copy thereof shall be served on the association by certified
 2797 mail or by personal service in the manner authorized by chapter
 2798 48 and the Florida Rules of Civil Procedure. The board of
 2799 administration shall duly notice and hold a meeting of the board
 2800 within 5 full business days after receipt of the agreement in

CS/HB 1397

2009

2801 writing. At the meeting, the board shall either certify the
2802 written agreement to recall members of the board, in which case
2803 such members shall be recalled effective immediately and shall
2804 turn over to the board, within 5 full business days, any and all
2805 records and property of the association in their possession, or
2806 proceed as described in subparagraph 3.

2807 3. If the board determines not to certify the written
2808 agreement to recall members of the board, or does not certify
2809 the recall by a vote at a meeting, the board shall, within 5
2810 full business days after the board meeting, file with the
2811 division a petition for binding arbitration pursuant to the
2812 procedures of s. 719.1255. For purposes of this paragraph, the
2813 shareholders ~~unit-owners~~ who voted at the meeting or who
2814 executed the agreement in writing shall constitute one party
2815 under the petition for arbitration. If the arbitrator certifies
2816 the recall as to any member of the board, the recall shall be
2817 effective upon mailing of the final order of arbitration to the
2818 association. If the association fails to comply with the order
2819 of the arbitrator, the division may take action pursuant to s.
2820 719.501. Any member so recalled shall deliver to the board any
2821 and all records and property of the association in the member's
2822 possession within 5 full business days of the effective date of
2823 the recall.

2824 4. If the board fails to duly notice and hold a board
2825 meeting within 5 full business days of service of an agreement
2826 in writing or within 5 full business days of the adjournment of
2827 the shareholder ~~unit-owner~~ recall meeting, the recall shall be
2828 deemed effective and the board members so recalled shall

2829 immediately turn over to the board any and all records and
 2830 property of the association.

2831 5. If a vacancy occurs on the board as a result of a
 2832 recall or removal and less than a majority of the board members
 2833 are removed, the vacancy may be filled by the affirmative vote
 2834 of a majority of the remaining directors, notwithstanding any
 2835 provision to the contrary contained in this chapter. If
 2836 vacancies occur on the board as a result of a recall and a
 2837 majority or more of the board members are removed, the vacancies
 2838 shall be filled in accordance with procedural rules to be
 2839 adopted by the division, which rules need not be consistent with
 2840 this chapter. The rules must provide procedures governing the
 2841 conduct of the recall election as well as the operation of the
 2842 association during the period after a recall but prior to the
 2843 recall election.

2844 (g) Common expenses.--The manner of collecting from the
 2845 shareholders ~~unit owners~~ their shares of the common expenses
 2846 shall be stated. Assessments shall be made against shareholders
 2847 ~~unit owners~~ not less frequently than quarterly, in an amount no
 2848 less than is required to provide funds in advance for payment of
 2849 all of the anticipated current operating expense and for all of
 2850 the unpaid operating expense previously incurred. Nothing in
 2851 this paragraph shall preclude the right of an association to
 2852 accelerate assessments of a shareholder ~~an owner~~ delinquent in
 2853 payment of common expenses in actions taken pursuant to s.
 2854 719.104 (5) ~~(4)~~.

2855 (h) Amendment of bylaws.--

2856 1. The method by which the bylaws may be amended

CS/HB 1397

2009

2857 consistent with the provisions of this chapter shall be stated.
2858 If the bylaws fail to provide a method of amendment, the bylaws
2859 may be amended if the amendment is approved by shareholders
2860 ~~owners~~ of not less than two-thirds of the voting interests.

2861 2. No bylaw shall be revised or amended by reference to
2862 its title or number only. Proposals to amend existing bylaws
2863 shall contain the full text of the bylaws to be amended; new
2864 words shall be inserted in the text underlined, and words to be
2865 deleted shall be lined through with hyphens. However, if the
2866 proposed change is so extensive that this procedure would
2867 hinder, rather than assist, the understanding of the proposed
2868 amendment, it is not necessary to use underlining and hyphens as
2869 indicators of words added or deleted, but, instead, a notation
2870 must be inserted immediately preceding the proposed amendment in
2871 substantially the following language: "Substantial rewording of
2872 bylaw. See bylaw _____ for present text."

2873 3. Nonmaterial errors or omissions in the bylaw process
2874 shall not invalidate an otherwise properly promulgated
2875 amendment.

2876 4. If the bylaws provide for amendment by the board of
2877 directors, no bylaw may be amended unless it is heard and
2878 noticed at two consecutive meetings of the board of directors
2879 that are at least 1 week apart.

2880 (i) Transfer fees.--No charge may be made by the
2881 association or any body thereof in connection with the sale,
2882 mortgage, lease, sublease, or other transfer of a unit unless
2883 the association is required to approve such transfer and a fee
2884 for such approval is provided for in the cooperative documents.

CS/HB 1397

2009

2885 Any such fee may be preset, but in no event shall it exceed \$100
 2886 per applicant other than husband/wife or parent/dependent child,
 2887 which are considered one applicant. However, if the lease or
 2888 sublease is a renewal of a lease or sublease with the same
 2889 lessee or sublessee, no charge shall be made. Nothing in this
 2890 paragraph shall be construed to prohibit an association from
 2891 requiring as a condition to permitting the letting or renting of
 2892 a unit, when the association has such authority in the
 2893 documents, the depositing into an escrow account maintained by
 2894 the association a security deposit in an amount not to exceed
 2895 the equivalent of 1 month's rent. The security deposit shall
 2896 protect against damages to the common areas or cooperative
 2897 property. Within 15 days after a tenant vacates the premises,
 2898 the association shall refund the full security deposit or give
 2899 written notice to the tenant of any claim made against the
 2900 security. Disputes under this paragraph shall be handled in the
 2901 same fashion as disputes concerning security deposits under s.
 2902 83.49.

2903 (j) Annual budget.--

2904 1. The proposed annual budget of estimated revenues and
 2905 ~~common~~ expenses shall be detailed and shall show the amounts
 2906 budgeted by accounts and expense classifications, including, if
 2907 applicable, but not limited to, those expenses listed in s.
 2908 719.504(20).

2909 2. In addition to annual operating expenses, the budget
 2910 shall include reserve accounts for capital expenditures and
 2911 deferred maintenance. These accounts shall include, but not be
 2912 limited to, roof replacement, building painting, and pavement

2913 resurfacing, regardless of the amount of deferred maintenance
 2914 expense or replacement cost, and for any other items for which
 2915 the deferred maintenance expense or replacement cost exceeds
 2916 \$10,000. The amount to be reserved shall be computed by means of
 2917 a formula which is based upon estimated remaining useful life
 2918 and estimated replacement cost or deferred maintenance expense
 2919 of each reserve item. The association may adjust replacement
 2920 reserve assessments annually to take into account any changes in
 2921 estimates or extension of the useful life of a reserve item
 2922 caused by deferred maintenance. This paragraph shall not apply
 2923 to any budget in which the members of an association have, at a
 2924 duly called meeting of the association, determined for a fiscal
 2925 year to provide no reserves or reserves less adequate than
 2926 required by this subsection. However, prior to turnover of
 2927 control of an association by a developer to shareholders ~~unit~~
 2928 ~~owners~~ other than a developer pursuant to s. 719.301, the
 2929 developer may vote to waive the reserves or reduce the funding
 2930 of reserves for the first 2 years of the operation of the
 2931 association after which time reserves may only be waived or
 2932 reduced upon the vote of a majority of all nondeveloper voting
 2933 interests voting in person or by limited proxy at a duly called
 2934 meeting of the association. If a meeting of the shareholders
 2935 ~~unit owners~~ has been called to determine to provide no reserves,
 2936 or reserves less adequate than required, and such result is not
 2937 attained or a quorum is not attained, the reserves as included
 2938 in the budget shall go into effect.

2939 3. Reserve funds and any interest accruing thereon shall
 2940 remain in the reserve account or accounts, and shall be used

CS/HB 1397

2009

2941 only for authorized reserve expenditures unless their use for
 2942 other purposes is approved in advance by a vote of the majority
 2943 of the voting interests, voting in person or by limited proxy at
 2944 a duly called meeting of the association. Prior to turnover of
 2945 control of an association by a developer to shareholders ~~unit~~
 2946 ~~owners~~ other than the developer under s. 719.301, the developer
 2947 may not vote to use reserves for purposes other than that for
 2948 which they were intended without the approval of a majority of
 2949 all nondeveloper voting interests, voting in person or by
 2950 limited proxy at a duly called meeting of the association.

2951 4. The only voting interests which are eligible to vote on
 2952 questions that involve waiving or reducing the funding of
 2953 reserves, or using existing reserve funds for purposes other
 2954 than purposes for which the reserves were intended, are the
 2955 voting interests of the units subject to assessment to fund the
 2956 reserves in question. Proxy questions relating to waiving or
 2957 reducing the funding of reserves or using existing reserve funds
 2958 for purposes other than purposes for which the reserves were
 2959 intended shall contain the following statement in capitalized,
 2960 bold letters in a font size larger than any other used on the
 2961 face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN
 2962 PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY
 2963 RESULT IN SHAREHOLDER LIABILITY FOR PAYMENT OF UNANTICIPATED
 2964 SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

2965 (k) Insurance or fidelity bonds.--The association shall
 2966 obtain and maintain adequate insurance or fidelity bonding of
 2967 all persons who control or disburse funds of the association.
 2968 The insurance policy or fidelity bond must cover the maximum

2969 funds that will be in the custody of the association or its
 2970 management agent at any one time. As used in this paragraph, the
 2971 term "persons who control or disburse funds of the association"
 2972 includes, but is not limited to, those individuals authorized to
 2973 sign checks, and the president, secretary, and treasurer of the
 2974 association. The association shall bear the cost of bonding and
 2975 insurance.

2976 (l) Arbitration.--There shall be a provision for mandatory
 2977 nonbinding arbitration of internal disputes arising from the
 2978 operation of the cooperative in accordance with s. 719.1255.

2979 (m) Common areas; limited power to convey.--

2980 1. The bylaws shall include a provision granting the
 2981 association a limited power to convey a portion of the common
 2982 areas to a condemning authority for the purpose of providing
 2983 utility easements, right-of-way expansion, or other public
 2984 purposes, whether negotiated or as a result of eminent domain
 2985 proceedings.

2986 2. In any case in which the bylaws are silent as to the
 2987 association's power to convey common areas as described in
 2988 subparagraph 1., the bylaws shall be deemed to include the
 2989 provision described in subparagraph 1.

2990 (n) Director or officer delinquencies.--A director or
 2991 officer more than 90 days delinquent in the payment of regular
 2992 assessments shall be deemed to have abandoned the office,
 2993 creating a vacancy in the office to be filled according to law.

2994 (o) Director or officer offenses.--A director or officer
 2995 charged by information or indictment with a felony theft or
 2996 embezzlement offense involving the association's funds or

2997 property shall be removed from office, creating a vacancy in the
 2998 office to be filled according to law. While such director or
 2999 officer has such criminal charge pending in the state or federal
 3000 court system, he or she may not be appointed or elected to a
 3001 position as a director or officer. However, should the charges
 3002 be resolved without a finding of guilt, the director or officer
 3003 shall be reinstated for the remainder of his or her term of
 3004 office, if any.

3005 (p) Qualifications of directors.-- In addition to any
 3006 other requirement for office in statute, a person running for or
 3007 seeking appointment to the board must meet the following
 3008 qualifications:

3009 1. In a cooperative association of 10 or more units, only
 3010 one individual coowner of a unit may serve on the board of
 3011 administration.

3012 2. No person may serve as a director of any cooperative
 3013 association in the state if restricted from serving by action of
 3014 the division pursuant to s. 719.501.

3015 3. A person who has been convicted of any felony in this
 3016 state or in a United States District or Territorial Court, or
 3017 who has been convicted of any offense in another jurisdiction
 3018 that would be considered a felony if committed in this state, is
 3019 not eligible for board membership unless such felon's civil
 3020 rights have been restored for a period of no less than 5 years
 3021 as of the date on which such person seeks election to the board.

3022 4. Within 30 days after being elected or appointed to the
 3023 board of directors, a director shall certify in writing to the
 3024 secretary of the association that he or she has read parts I and

3025 III of chapter 719 and the association's cooperative documents,
 3026 bylaws, and current written policies. The director shall further
 3027 certify that he or she will work to uphold such documents and
 3028 policies to the best of his or her ability, and that he or she
 3029 will faithfully discharge his or her fiduciary responsibility to
 3030 the association's members. If the division finds that a director
 3031 has falsely certified that he or she has read the required
 3032 statutes and documents, the division shall order the director
 3033 removed the board and shall order the director to reimburse the
 3034 division for the cost of prosecution and hearing.

3035 5. After turnover of the association pursuant to s.
 3036 718.301(4), a director must:

3037 a. If the unit is owned by an individual or individuals,
 3038 be one of those individuals.

3039 b. If the unit is owned by a trust, be an individual
 3040 qualified pursuant to s. 617.0802.

3041
 3042 These qualifications shall operate on a continuing basis, and
 3043 upon the failure of a director at any time to meet a
 3044 qualification, the director shall be removed from office and
 3045 that office shall be deemed vacant.

3046 (q) Borrowing.--The borrowing of funds or committing to a
 3047 line of credit by the board of administration shall be
 3048 considered a special assessment, and any meeting of the board of
 3049 administration to discuss such matters shall be noticed as
 3050 provided in paragraph (c). The board shall not have the
 3051 authority to enter into a line of credit or borrow funds for any
 3052 purpose unless the specific use of the funds from the line of

3053 credit or loan is set forth in the notice of meeting with the
 3054 same specificity as required for a special assessment or unless
 3055 the borrowing or line of credit has received the prior approval
 3056 of not less than two-thirds of the voting interests of the
 3057 association.

3058 (2) OPTIONAL PROVISIONS.--The bylaws may provide for the
 3059 following:

3060 (a) Administrative rules.--A method of adopting and of
 3061 amending administrative rules and regulations governing the
 3062 details of the operation and use of the common areas.

3063 (b) Use and maintenance restrictions.--Restrictions on,
 3064 and requirements for, the use, maintenance, and appearance of
 3065 the units and the use of the common areas, not inconsistent with
 3066 the cooperative documents, designed to prevent unreasonable
 3067 interference with the use of the units and common areas.

3068 (c) Notice of meetings.--Provisions for giving notice by
 3069 electronic transmissions in a manner authorized by law of
 3070 meetings of the board of directors and committees and of annual
 3071 and special meetings of the members.

3072 (d) Other matters.--Other provisions not inconsistent with
 3073 this chapter or with the cooperative documents as may be
 3074 desired.

3075 Section 16. Section 719.1064, Florida Statutes, is
 3076 repealed.

3077 Section 17. Paragraphs (b) and (c) of subsection (1) and
 3078 subsection (2) of section 719.107, Florida Statutes, are
 3079 amended, and subsection (3) is added to that section, to read:

3080 719.107 Common expenses; assessment.--

3081 (1)
 3082 (b) If so provided in the bylaws, the cost of a master
 3083 antenna television system or duly franchised cable television
 3084 service obtained pursuant to a bulk contract shall be deemed a
 3085 common expense, and if not obtained pursuant to a bulk contract,
 3086 such cost shall be considered common expense if it is designated
 3087 as such in a written contract between the board of
 3088 administration and the company providing the master television
 3089 antenna system or the cable television service. The contract
 3090 shall be for a term of not less than 2 years.

3091 1. Any contract made by the board after April 2, 1992, for
 3092 a community antenna system or duly franchised cable television
 3093 service may be canceled by a majority of the voting interests
 3094 present at the next regular or special meeting of the
 3095 association. Any member may make a motion to cancel the
 3096 contract, but if no motion is made or if such motion fails to
 3097 obtain the required majority at the next regular or special
 3098 meeting, whichever is sooner, following the making of the
 3099 contract, then such contract shall be deemed ratified for the
 3100 term therein expressed.

3101 2. Any such contract shall provide, and shall be deemed to
 3102 provide if not expressly set forth, that any hearing impaired or
 3103 legally blind shareholder ~~unit owner~~ who does not occupy the
 3104 unit with a nonhearing impaired or sighted person may
 3105 discontinue the service without incurring disconnect fees,
 3106 penalties, or subsequent service charges, and as to such units,
 3107 the shareholders ~~owners~~ shall not be required to pay any common
 3108 expenses charge related to such service. If less than all

CS/HB 1397

2009

3109 members of an association share the expenses of cable
3110 television, the expense shall be shared equally by all
3111 participating shareholders ~~unit-owners~~. The association may use
3112 the provisions of s. 719.108 to enforce payment of the shares of
3113 such costs by the shareholders ~~unit-owners~~ receiving cable
3114 television.

3115 (c) If any unpaid share of common expenses or assessments
3116 is extinguished by foreclosure of a superior lien or by a deed
3117 in lieu of foreclosure thereof, the unpaid share of common
3118 expenses or assessments are common expenses collectible from all
3119 the shareholders ~~unit-owners~~ in the cooperative in which the
3120 unit is located.

3121 (2) Funds for the payment of common expenses shall be
3122 collected by assessments against shareholders ~~unit-owners~~ in the
3123 proportions or percentages of sharing common expenses provided
3124 in the cooperative documents.

3125 (3) The expense of installation, replacement, operation,
3126 repair, and maintenance of hurricane shutters or other hurricane
3127 protection by the board pursuant to s. 719.113(5) shall
3128 constitute a common expense as defined in this section and shall
3129 be collected as provided in this section if the association is
3130 responsible for the maintenance, repair, and replacement of the
3131 hurricane shutters or other hurricane protection pursuant to the
3132 cooperative documents. However, if the maintenance, repair, and
3133 replacement of the hurricane shutters or other hurricane
3134 protection is the responsibility of the shareholders pursuant to
3135 the cooperative documents, the cost of the installation of the
3136 hurricane shutters or other hurricane protection shall not be a

3137 common expense, but shall be charged individually to the
 3138 shareholders based on the cost of installation of the hurricane
 3139 shutters or other hurricane protection appurtenant to the unit.
 3140 Notwithstanding the provisions of s. 719.108(8), and regardless
 3141 of whether or not the cooperative documents requires the
 3142 association or shareholders maintain, repair, or replace
 3143 hurricane shutters or other hurricane protection, a shareholder
 3144 who has previously installed hurricane shutters in accordance
 3145 with s. 719.113(5), other hurricane protection, or laminated
 3146 glass architecturally designed to function as hurricane
 3147 protection, which hurricane shutters or other hurricane
 3148 protection or laminated glass comply with the current applicable
 3149 building code, shall receive a credit equal to the pro rata
 3150 portion of the assessed installation cost assigned to each unit.
 3151 However, such shareholder shall remain responsible for the pro
 3152 rata share of expenses for hurricane shutters or other hurricane
 3153 protection installed on common areas by the board pursuant to s.
 3154 719.113(5), and shall remain responsible for a pro rata share of
 3155 the expense of the replacement, operation, repair, and
 3156 maintenance of such shutters or other hurricane protection.

3157 Section 18. Section 719.108, Florida Statutes, is amended
 3158 to read:

3159 719.108 Rents and assessments; liability; lien and
 3160 priority; interest; collection; cooperative ownership.--

3161 (1)(a) A shareholder ~~unit owner~~, regardless of how title
 3162 is acquired, including, without limitation, a purchaser at a
 3163 judicial sale or by deed in lieu of foreclosure, shall be liable
 3164 for all rents and assessments coming due while the shareholder

3165 ~~unit owner~~ is in exclusive possession of a unit. ~~In a voluntary~~
 3166 ~~transfer,~~ The shareholder ~~unit owner~~ in exclusive possession
 3167 shall be jointly and severally liable with the previous
 3168 shareholder ~~unit owner~~ for all unpaid rents and assessments
 3169 against the previous shareholder ~~unit owner~~ for his or her share
 3170 of the common expenses up to the time of the transfer, without
 3171 prejudice to the rights of the shareholder ~~unit owner~~ in
 3172 exclusive possession to recover from a ~~the~~ previous shareholder
 3173 ~~unit owner~~ the amounts paid by the shareholder ~~unit owner~~ in
 3174 exclusive possession therefor.

3175 (b) The liability of a first mortgagee or its successor or
 3176 assignees who acquire title to a unit by foreclosure or by deed
 3177 in lieu of foreclosure for the unpaid assessments that became
 3178 due prior to the mortgagee's acquisition of title is limited to
 3179 the lesser of:

3180 1. The unit's unpaid common expenses and regular periodic
 3181 assessments which accrued or came due during the 6 months
 3182 immediately preceding the acquisition of title and for which
 3183 payment in full has not been received by the association; or

3184 2. One-half of the unit's unpaid common expenses and
 3185 regular periodic assessments which accrued or came due from the
 3186 filing of the foreclosure action through the sale of the unit,
 3187 provided that the mortgagee timely paid in full the payment
 3188 required by paragraph (d) and, at the same time, remitted to the
 3189 association advanced common expenses and regular periodic
 3190 assessments equal to one-half of the total unpaid common
 3191 expenses and regular periodic assessments that came due in that
 3192 time period. Any such advance shall be taxed as a cost in the

3193 foreclosure action, and the mortgagor shall be personally liable
 3194 to the mortgagee for the value of the payment made to the
 3195 association plus interest at the interest rate provided for in
 3196 the promissory note for advances.

3197 (c) The person acquiring title shall pay the amount owed
 3198 to the association within 30 days after transfer of title.
 3199 Failure to pay the full amount when due shall entitle the
 3200 association to record a claim of lien against the parcel and
 3201 proceed in the same manner as provided in this section for the
 3202 collection of unpaid assessments.

3203 (d) A mortgagee who files a foreclosure case on a mortgage
 3204 secured by a condominium unit shall pay to the association
 3205 within 15 days after the filing of the action all of the
 3206 condominium unit's then unpaid common expenses and regular
 3207 periodic assessments which accrued or came due up to the date of
 3208 the filing of the foreclosure action. The payment shall be taxed
 3209 as a cost in the foreclosure action, and the mortgagor shall be
 3210 personally liable to the mortgagee for the value of the payment
 3211 made to the association plus interest at the interest rate
 3212 provided for in the promissory note for advances. The court
 3213 shall dismiss a foreclosure action on the association's motion
 3214 to dismiss for failure to make such payment and shall award the
 3215 association the costs and reasonable attorney's fees related to
 3216 the motion.

3217 (e) The provisions of this subsection are intended to
 3218 clarify existing law and shall not be available in any case
 3219 where the unpaid assessments sought to be recovered by the
 3220 association are secured by a lien recorded prior to the

3221 recording of the mortgage. Notwithstanding the provisions of
 3222 chapter 48, the association shall be a proper party to intervene
 3223 in any foreclosure proceeding to seek equitable relief. For
 3224 purposes of this subsection, the term "successor or assignee" as
 3225 used with respect to a first mortgagee includes only a
 3226 subsequent holder of the first mortgage.

3227 (2) The liability for rents and assessments may not be
 3228 avoided by waiver of the use or enjoyment of any common areas or
 3229 by abandonment of the unit for which the rents and assessments
 3230 are made.

3231 (3) Rents and assessments, and installments on them, not
 3232 paid when due bear interest at the rate provided in the
 3233 cooperative documents from the date due until paid. This rate
 3234 may not exceed the rate allowed by law, and, if no rate is
 3235 provided in the cooperative documents, then interest shall
 3236 accrue at 18 percent per annum. Also, if the cooperative
 3237 documents or bylaws so provide, the association may charge an
 3238 administrative late fee in addition to such interest, in an
 3239 amount not to exceed the greater of \$25 or 5 percent of each
 3240 installment of the assessment for each delinquent installment
 3241 that the payment is late. Any payment received by an association
 3242 shall be applied first to any interest accrued by the
 3243 association, then to any administrative late fee, then to any
 3244 costs and reasonable attorney's fees incurred in collection, and
 3245 then to the delinquent assessment. The foregoing shall be
 3246 applicable notwithstanding any restrictive endorsement,
 3247 designation, or instruction placed on or accompanying a payment.
 3248 A late fee is not subject to chapter 687 or s. 719.303(3).

3249 (4) If the association is authorized by the cooperative
3250 documents or bylaws to approve or disapprove a proposed lease of
3251 a unit, the grounds for disapproval may include, but are not
3252 limited to, a shareholder being delinquent in the payment of an
3253 assessment at the time approval is sought.

3254 (5) (a) ~~(4)~~ The association ~~has~~ shall have a lien on each
3255 cooperative parcel to secure the payment of ~~for~~ any unpaid rents
3256 and assessments, plus interest, against the shareholder who owns
3257 ~~unit owner~~ of the cooperative parcel. If authorized by the
3258 cooperative documents, said lien shall also secure reasonable
3259 attorney's fees incurred by the association incident to the
3260 collection of the rents and assessments or enforcement of such
3261 lien. The lien is effective from and shall relate back to and
3262 ~~after~~ the recording of the cooperative documents ~~a claim of lien~~
3263 ~~in the public records in the county in which the cooperative~~
3264 ~~parcel is located which states the description of the~~
3265 ~~cooperative parcel, the name of the unit owner, the amount due,~~
3266 ~~and the due dates.~~

3267 (b) To be valid, a claim of lien must state the
3268 description of the cooperative parcel, the name of the record
3269 owner, the name and address of the association, the amount due,
3270 and the due dates. The claim of lien must be executed and
3271 acknowledged by an officer or authorized agent of the
3272 association. The lien shall expire if a claim of lien is not
3273 filed within 1 year after the date the assessment was due, and
3274 no such lien shall continue for a longer period than 1 year
3275 after the claim of lien has been recorded unless, within that
3276 time, an action to enforce the lien is commenced in a court of

3277 competent jurisdiction. The 1-year period shall automatically be
 3278 extended for any length of time during which the association is
 3279 prevented from filing a foreclosure action by an automatic stay
 3280 resulting from a bankruptcy petition filed by the shareholder or
 3281 any other person claiming an interest in the parcel. The claim
 3282 of lien shall secure all unpaid assessments which are due and
 3283 which may accrue subsequent to the recording of the claim of
 3284 lien and prior to the entry of a certificate of title, as well
 3285 as interest and all reasonable costs and attorney's fees
 3286 incurred by the association incident to the collection process.
 3287 Upon payment in full, the person making the payment is entitled
 3288 to a satisfaction of the lien. No lien may be filed by the
 3289 association against a cooperative parcel until 30 days after the
 3290 date on which a notice of intent to file a lien has been served
 3291 on the unit owner of the cooperative parcel by certified mail or
 3292 by personal service in the manner authorized by chapter 48 and
 3293 the Florida Rules of Civil Procedure.

3294 (c) By recording a notice in substantially the following
 3295 form, a shareholder or the shareholder's agent or attorney may
 3296 require the association to enforce a recorded claim of lien
 3297 against his or her cooperative parcel:

3298
 3299 NOTICE OF CONTEST OF LIEN

3300
 3301 TO: (Name and address of association) You are notified
 3302 that the undersigned contests the claim of lien filed by you on
 3303 , (year) , and recorded in Official Records Book
 3304 at Page , of the public records of County, Florida,

CS/HB 1397

2009

3305 and that the time within which you may file suit to enforce your
 3306 lien is limited to 90 days after the date of service of this
 3307 notice. Executed this _____ day of _____, (year) _____.

3308
 3309 Signed: _____ (Shareholder or Attorney)

3310
 3311 After notice of contest of lien has been recorded, the clerk of
 3312 the circuit court shall mail a copy of the recorded notice to
 3313 the association by certified mail, return receipt requested, at
 3314 the address shown in the claim of lien or most recent amendment
 3315 to the claim of lien and shall certify to the service on the
 3316 face of the notice. Service is complete upon mailing. After
 3317 service, the association has 90 days in which to file an action
 3318 to enforce the lien; and, if the action is not filed within the
 3319 90-day period, the lien is void. However, the 90-day period
 3320 shall be extended for any length of time that the association is
 3321 prevented from filing its action because of an automatic stay
 3322 resulting from the filing of a bankruptcy petition by the
 3323 shareholder or by any other person claiming an interest in the
 3324 parcel.

3325 (6) (a) ~~(5)~~ Liens for rents and assessments may be
 3326 foreclosed by suit brought in the name of the association, in
 3327 like manner as a foreclosure of a mortgage on real property. In
 3328 any foreclosure, the shareholder ~~unit owner~~ shall pay a
 3329 reasonable rental for the cooperative parcel, if so provided in
 3330 the cooperative documents, and the plaintiff in the foreclosure
 3331 is entitled to the appointment of a receiver to collect the
 3332 rent. The association has the power, unless prohibited by the

CS/HB 1397

2009

3333 cooperative documents, to bid on the cooperative parcel at the
3334 foreclosure sale and to acquire and hold, lease, mortgage, or
3335 convey it. Suit to recover a money judgment for unpaid rents and
3336 assessments may be maintained without waiving the lien securing
3337 them.

3338 (b) No foreclosure judgment may be entered until at least
3339 30 days after the association gives written notice to the
3340 shareholder of its intention to foreclose its lien to collect
3341 the unpaid rents and assessments. If this notice is not given at
3342 least 30 days before the foreclosure action is filed, and if the
3343 unpaid rents and assessments, including those coming due after
3344 the claim of lien is recorded, are paid before the entry of a
3345 final judgment of foreclosure, the association shall not recover
3346 attorney's fees or costs. The notice must be given by delivery
3347 of a copy of it to the shareholder or by certified or registered
3348 mail, return receipt requested, addressed to the shareholder at
3349 his or her last known address; and, upon such mailing, the
3350 notice shall be deemed to have been given, and the court shall
3351 proceed with the foreclosure action and may award attorney's
3352 fees and costs as permitted by law. The notice requirements of
3353 this paragraph are satisfied if the shareholder records a notice
3354 of contest of lien as provided in subsection (5). The notice
3355 requirements of this paragraph do not apply if an action to
3356 foreclose a mortgage on the cooperative unit is pending before
3357 any court; if the rights of the association would be affected by
3358 such foreclosure; and if actual, constructive, or substitute
3359 service of process has been made on the shareholder.

3360 (c) If the shareholder remains in possession of the unit

CS/HB 1397

2009

3361 after a foreclosure judgment has been entered, the court, in its
3362 discretion, may require the shareholder to pay a reasonable
3363 rental for the unit. If the unit is rented or leased during the
3364 pendency of the foreclosure action, the association is entitled
3365 to the appointment of a receiver to collect the rent. The
3366 expenses of the receiver shall be paid by the party which does
3367 not prevail in the foreclosure action.

3368 (d) The association has the power to purchase the
3369 cooperative unit at the foreclosure sale and to hold, lease,
3370 mortgage, or convey it.

3371 (7) Within 15 days after receiving a written request
3372 therefor from a shareholder or his or her designee, or a unit
3373 mortgagee or his or her designee, the association shall provide
3374 a certificate signed by an officer or agent of the association
3375 stating all assessments and other moneys owed to the association
3376 by the shareholder with respect to the cooperative parcel.

3377 (a) Any person other than the shareholder who relies upon
3378 such certificate shall be protected thereby.

3379 (b) A summary proceeding pursuant to s. 51.011 may be
3380 brought to compel compliance with this subsection, and in any
3381 such action the prevailing party is entitled to recover
3382 reasonable attorney's fees.

3383 (c) Notwithstanding any limitation on transfer fees
3384 contained in s. 719.106(1)(i), the association or its authorized
3385 agent may charge a reasonable fee for the preparation of the
3386 certificate. The amount of the fee must be included on the
3387 certificate.

3388 (d) The authority to charge a fee for the certificate

3389 shall be established by a written resolution adopted by the
 3390 board or provided by a written management, bookkeeping, or
 3391 maintenance contract and is payable upon the preparation of the
 3392 certificate. If the certificate is requested in conjunction with
 3393 the sale or mortgage of a unit but the closing does not occur
 3394 and no later than 30 days after the closing date for which the
 3395 certificate was sought the preparer receives a written request,
 3396 accompanied by reasonable documentation, that the sale did not
 3397 occur from a payor that is not the shareholder, the fee shall be
 3398 refunded to that payor within 30 days after receipt of the
 3399 request. The refund is the obligation of the shareholder, and
 3400 the association may collect the refund from that shareholder in
 3401 the same manner as an assessment as provided in this section.

3402 ~~(6) Within 15 days after request by a unit owner or~~
 3403 ~~mortgagee, the association shall provide a certificate stating~~
 3404 ~~all assessments and other moneys owed to the association by the~~
 3405 ~~unit owner with respect to the cooperative parcel. Any person~~
 3406 ~~other than the unit owner who relies upon such certificate shall~~
 3407 ~~be protected thereby. Notwithstanding any limitation on transfer~~
 3408 ~~fees contained in s. 719.106(1)(i), the association or its~~
 3409 ~~authorized agent may charge a reasonable fee for the preparation~~
 3410 ~~of the certificate.~~

3411 ~~(7) The remedies provided in this section do not exclude~~
 3412 ~~other remedies provided by the cooperative documents and~~
 3413 ~~permitted by law.~~

3414 (8) (a) No shareholder ~~unit owner~~ may be excused from the
 3415 payment of his or her share of the rents or assessments of a
 3416 cooperative unless all shareholders ~~unit owners~~ are likewise

CS/HB 1397

2009

3417 proportionately excused from payment, except ~~as provided in~~
3418 ~~subsection (6) and~~ in the following cases:

3419 1. If the cooperative documents so provide, a developer or
3420 other person owning cooperative units offered for sale may be
3421 excused from the payment of the share of the common expenses,
3422 assessments, and rents related to those units for a stated
3423 period of time. The period must terminate no later than the
3424 first day of the fourth calendar month following the month in
3425 which the right of exclusive possession is first granted to a
3426 shareholder ~~unit owner~~. However, the developer must pay the
3427 portion of common expenses incurred during that period which
3428 exceed the amount assessed against other shareholders ~~unit~~
3429 ~~owners~~.

3430 2. A developer, or other person with an ownership interest
3431 in cooperative units or having an obligation to pay common
3432 expenses, may be excused from the payment of his or her share of
3433 the common expenses which would have been assessed against those
3434 units during the period of time that he or she shall have
3435 guaranteed to each purchaser in the purchase contract or in the
3436 cooperative documents, or by agreement between the developer and
3437 a majority of the shareholders ~~unit owners~~ other than the
3438 developer, that the assessment for common expenses of the
3439 cooperative imposed upon the shareholders ~~unit owners~~ would not
3440 increase over a stated dollar amount and shall have obligated
3441 himself or herself to pay any amount of common expenses incurred
3442 during that period and not produced by the assessments at the
3443 guaranteed level receivable from other shareholders ~~unit owners~~.

3444 (b) If the purchase contract, cooperative documents, or

3445 agreement between the developer and a majority of shareholders
 3446 ~~unit owners~~ other than the developer provides for the developer
 3447 or another person to be excused from the payment of assessments
 3448 pursuant to paragraph (a), no funds receivable from shareholders
 3449 ~~unit owners~~ payable to the association or collected by the
 3450 developer on behalf of the association, other than regular
 3451 periodic assessments for common expenses as provided in the
 3452 cooperative documents and disclosed in the estimated operating
 3453 budget pursuant to s. 719.503(1)(b)6. or s. 719.504(20)(b), may
 3454 be used for payment of common expenses prior to the expiration
 3455 of the period during which the developer or other person is so
 3456 excused. This restriction applies to funds including, but not
 3457 limited to, capital contributions or startup funds collected
 3458 from shareholders ~~unit purchasers~~ at closing.

3459 (9) The specific purposes of any special assessment,
 3460 including any contingent special assessment levied in
 3461 conjunction with the purchase of an insurance policy authorized
 3462 by s. 719.104(3), approved in accordance with the cooperative
 3463 documents shall be set forth in a written notice of such
 3464 assessment sent or delivered to each shareholder ~~unit owner~~. The
 3465 funds collected pursuant to a special assessment shall be used
 3466 only for the specific purpose or purposes set forth in such
 3467 notice or returned to the shareholders ~~unit owners~~. However,
 3468 upon completion of such specific purposes, any excess funds
 3469 shall be considered common surplus and may, at the discretion of
 3470 the board, either be returned to the shareholders ~~unit owners~~ or
 3471 applied as a credit toward future assessments.

3472 (10) During the pendency of any foreclosure action of a

3473 cooperative unit, if the unit is occupied by a tenant and the
 3474 shareholder is delinquent in the payment of regular assessments,
 3475 the association may demand that the tenant pay to the
 3476 association the future regular assessments related to the
 3477 cooperative unit. The demand shall be continuing in nature, and
 3478 upon demand the tenant shall continue to pay the regular
 3479 assessments to the association until the association releases
 3480 the tenant or the tenant discontinues tenancy in the unit. The
 3481 association shall mail written notice to the shareholder of the
 3482 association's demand that the tenant pay regular assessments to
 3483 the association. The tenant shall not be liable for increases in
 3484 the amount of the regular assessment due unless the tenant was
 3485 reasonably notified of the increase prior to the day that the
 3486 rent is due. The tenant shall be given a credit against rents
 3487 due to the shareholder in the amount of assessments paid to the
 3488 association. The association shall, upon request, provide the
 3489 tenant with written receipts for payments made. The association
 3490 may issue notices under s. 83.56 and may sue for eviction under
 3491 ss. 83.59-83.625 as if the association were a landlord under
 3492 part II of chapter 83 should the tenant fail to pay an
 3493 assessment. However, the association shall not otherwise be
 3494 considered a landlord under chapter 83 and shall specifically
 3495 not have any duty under s. 83.51. The tenant shall not, by
 3496 virtue of payment of assessments, have any of the rights of a
 3497 shareholder to vote in any election or to examine the books and
 3498 records of the association. A court may supersede the effect of
 3499 this subsection by appointing a receiver.

3500 Section 19. Section 719.113, Florida Statutes, is created

3501 to read:

3502 719.113 Maintenance; limitation upon improvement; display
 3503 of flag; hurricane shutters; display of religious decorations.--

3504 (1) Maintenance of the common areas is the responsibility
 3505 of the association. The cooperative documents may provide that
 3506 certain limited common areas shall be maintained by those
 3507 entitled to use the limited common areas or that the association
 3508 shall provide the maintenance, either as a common expense or
 3509 with the cost shared only by those entitled to use the limited
 3510 common areas. If the maintenance is to be provided by the
 3511 association at the expense of only those entitled to use the
 3512 limited common areas, the cooperative documents shall describe
 3513 in detail the method of apportioning such costs among those
 3514 entitled to use the limited common areas. The association may
 3515 use the provisions of s. 719.108 to enforce payment of the
 3516 shares of such costs by the shareholders entitled to use the
 3517 limited common areas.

3518 (2) Except as otherwise provided in this section, there
 3519 shall be no material alteration or substantial additions to the
 3520 common areas, except in a manner provided in the cooperative
 3521 documents as originally recorded or as amended under the
 3522 procedures provided therein. If the cooperative documents as
 3523 originally recorded or as amended under the procedures provided
 3524 therein do not specify the procedure for approval of material
 3525 alterations or substantial additions, 75 percent of the total
 3526 voting interests of the association must approve the alterations
 3527 or additions. This subsection is intended to clarify existing
 3528 law and applies to associations existing on July 1, 2009.

CS/HB 1397

2009

3529 (3) A shareholder shall not do anything within his or her
3530 unit or on the common areas which would adversely affect the
3531 safety or soundness of the common areas or any portion of the
3532 association property or cooperative property which is to be
3533 maintained by the association.

3534 (4) Any shareholder may display within the boundaries of
3535 the shareholder's unit one portable, removable United States
3536 flag in a respectful way and, on Armed Forces Day, Memorial Day,
3537 Flag Day, Independence Day, and Veterans' Day, may display in a
3538 respectful way portable, removable official flags, not larger
3539 than 4 1/2 feet by 6 feet, that represent the United States
3540 Army, Navy, Air Force, Marine Corps, or Coast Guard, regardless
3541 of any declaration rules or requirements dealing with flags or
3542 decorations.

3543 (5) Each board of directors shall adopt hurricane shutter
3544 specifications for each building within each cooperative which
3545 shall include color, style, and other factors deemed relevant by
3546 the board. All specifications adopted by the board shall comply
3547 with the applicable building code.

3548 (a) The board may, subject to the provisions of s.
3549 719.3026 and the approval of a majority of voting interests of
3550 the condominium, install hurricane shutters or hurricane
3551 protection that complies with or exceeds the applicable building
3552 code, or both, except that a vote of the shareholders is not
3553 required if the maintenance, repair, and replacement of
3554 hurricane shutters or other forms of hurricane protection are
3555 the responsibility of the association pursuant to the
3556 declaration of condominium. However, when hurricane protection

3557 or laminated glass or window film architecturally designed to
 3558 function as hurricane protection which complies with or exceeds
 3559 the current applicable building code has been previously
 3560 installed, the board may not install hurricane shutters or other
 3561 hurricane protection. Code-compliant impact glass may be
 3562 installed by the association as hurricane protection if the area
 3563 in which the glass is to be installed is an area that is the
 3564 responsibility of the association. Notwithstanding s.
 3565 719.107(3), if a shareholder installed code-compliant impact
 3566 glass prior to the association voting to install such glass, and
 3567 such glass and the frame thereof complies with the current
 3568 applicable building codes and is otherwise in good repair, the
 3569 shareholder shall not be required to pay the shareholders' pro
 3570 rata share of the cost of installing code-compliant impact glass
 3571 in the cooperative association.

3572 (b) The association shall be responsible for the
 3573 maintenance, repair, and replacement of the hurricane shutters
 3574 or other hurricane protection authorized by this subsection if
 3575 such hurricane shutters or other hurricane protection is the
 3576 responsibility of the association pursuant to the declaration of
 3577 condominium. If the hurricane shutters or other hurricane
 3578 protection authorized by this subsection are the responsibility
 3579 of the shareholders pursuant to the cooperative documents, the
 3580 responsibility for the maintenance, repair, and replacement of
 3581 such items shall be the responsibility of the shareholder.

3582 (c) The board may operate hurricane shutters installed
 3583 pursuant to this subsection without permission of the
 3584 shareholders only when such operation is necessary to preserve

3585 and protect the cooperative property and association property.
3586 The installation, replacement, operation, repair, and
3587 maintenance of such shutters in accordance with the procedures
3588 set forth herein shall not be deemed a material alteration to
3589 the common elements or association property within the meaning
3590 of this section.

3591 (d) Notwithstanding any provision to the contrary in the
3592 cooperative documents, if approval is required by the documents,
3593 a board shall not refuse to approve the installation or
3594 replacement of hurricane shutters by a shareholder conforming to
3595 the specifications adopted by the board.

3596 (6) As to any cooperative building greater than three
3597 stories in height, at least every 5 years, and within 5 years if
3598 not available for inspection on July 1, 2009, the board shall
3599 have the cooperative building inspected to provide a report
3600 under seal of an architect or engineer authorized to practice in
3601 this state attesting to required maintenance, useful life, and
3602 replacement costs of the common areas. However, if approved by a
3603 majority of the voting interests present at a properly called
3604 meeting of the association, an association may waive this
3605 requirement. Such meeting and approval must occur prior to the
3606 end of the 5-year period and is effective only for that 5-year
3607 period.

3608 (7) An association may not refuse the request of a
3609 shareholder for a reasonable accommodation for the attachment on
3610 the mantel or frame of the door of the shareholder of a
3611 religious object not to exceed 3 inches wide, 6 inches high, and
3612 1.5 inches deep.

3613 (8) Notwithstanding the provisions of this section or the
 3614 governing documents of a cooperative association, the board of
 3615 directors may, without any requirement for approval of the
 3616 shareholders, install upon or within the common areas or
 3617 association property solar collectors, clotheslines, or other
 3618 energy-efficient devices based on renewable resources for the
 3619 benefit of the shareholders.

3620 Section 20. Section 719.117, Florida Statutes, is created
 3621 to read:

3622 719.117 Termination of cooperative.--

3623 (1) LEGISLATIVE FINDINGS.--The Legislature finds that
 3624 cooperatives are created as authorized by statute. In
 3625 circumstances that may create economic waste, areas of
 3626 disrepair, or obsolescence of a cooperative property for its
 3627 intended use and thereby lower property tax values, the
 3628 Legislature further finds that it is the public policy of this
 3629 state to provide by statute a method to preserve the value of
 3630 the property interests and the rights of alienation thereof that
 3631 shareholders have in the cooperative property before and after
 3632 termination. The Legislature further finds that it is contrary
 3633 to the public policy of this state to require the continued
 3634 operation of a cooperative when to do so constitutes economic
 3635 waste or when the ability to do so is made impossible by law or
 3636 regulation. This section applies to all cooperatives in this
 3637 state in existence on or after July 1, 2009.

3638 (2) TERMINATION BECAUSE OF ECONOMIC WASTE OR
 3639 IMPOSSIBILITY.--

3640 (a) Notwithstanding any provision to the contrary in the

3641 cooperative documents, the cooperative form of ownership of a
 3642 property may be terminated by a plan of termination approved by
 3643 the lesser of the lowest percentage of voting interests
 3644 necessary to amend the articles of incorporation when:
 3645 1. The total estimated cost of repairs necessary to
 3646 restore the improvements to their former condition or bring them
 3647 into compliance with applicable laws or regulations exceeds the
 3648 combined fair market value of all units in the cooperative after
 3649 completion of the repairs; or
 3650 2. It becomes impossible to operate or reconstruct a
 3651 cooperative in its prior physical configuration because of land
 3652 use laws or regulations.
 3653 (b) Notwithstanding paragraph (a), a cooperative in which
 3654 75 percent or more of the units are timeshare units may be
 3655 terminated only pursuant to a plan of termination approved by 80
 3656 percent of the total voting interests of the association and the
 3657 holders of 80 percent of the original principal amount of
 3658 outstanding recorded mortgage liens of timeshare estates in the
 3659 cooperative, unless the declaration provides for a lower voting
 3660 percentage.
 3661 (3) OPTIONAL TERMINATION.--Except as provided in
 3662 subsection (2) or unless the declaration provides for a lower
 3663 percentage, the cooperative form of ownership of the property
 3664 may be terminated pursuant to a plan of termination approved by
 3665 at least 80 percent of the total voting interests of the
 3666 cooperative if not more than 10 percent of the total voting
 3667 interests of the cooperative have rejected the plan of
 3668 termination by negative vote or by providing written objections

3669 thereto. This subsection does not apply to cooperatives in which
 3670 75 percent or more of the units are timeshare units.

3671 (4) EXEMPTION.--A plan of termination is not an amendment
 3672 subject to s. 719.1055(1).

3673 (5) MORTGAGE LIENHOLDERS.--Notwithstanding any provision
 3674 to the contrary in the declaration or this chapter, approval of
 3675 a plan of termination by the holder of a recorded mortgage lien
 3676 affecting a cooperative parcel in which fewer than 75 percent of
 3677 the units are timeshare units is not required unless the plan of
 3678 termination will result in less than the full satisfaction of
 3679 the mortgage lien affecting the cooperative parcel. If such
 3680 approval is required and not given, a holder of a recorded
 3681 mortgage lien who objects to the plan of termination may contest
 3682 the plan as provided in subsection (16). At the time of sale,
 3683 the lien shall be transferred to the proportionate share of the
 3684 proceeds assigned to the cooperative parcel in the plan of
 3685 termination or as subsequently modified by the court.

3686 (6) POWERS IN CONNECTION WITH TERMINATION.--The approval
 3687 of the plan of termination does not terminate the association.
 3688 The association shall continue in existence following approval
 3689 of the plan of termination with all powers and duties it had
 3690 before approval of the plan. Notwithstanding any provision to
 3691 the contrary in the declaration or bylaws, after approval of the
 3692 plan the board shall:

3693 (a) Employ directors, agents, attorneys, and other
 3694 professionals to liquidate or conclude its affairs.

3695 (b) Conduct the affairs of the association as necessary
 3696 for the liquidation or termination.

3697 (c) Carry out contracts and collect, pay, and settle debts
 3698 and claims for and against the association.

3699 (d) Defend suits brought against the association.

3700 (e) Sue in the name of the association for all sums due or
 3701 owed to the association or to recover any of its property.

3702 (f) Perform any act necessary to maintain, repair, or
 3703 demolish unsafe or uninhabitable improvements or other
 3704 cooperative property in compliance with applicable codes.

3705 (g) Sell at public or private sale or exchange, convey, or
 3706 otherwise dispose of assets of the association for an amount
 3707 deemed to be in the best interests of the association, and
 3708 execute bills of sale and deeds of conveyance in the name of the
 3709 association.

3710 (h) Collect and receive rents, profits, accounts
 3711 receivable, income, maintenance fees, special assessments, or
 3712 insurance proceeds for the association.

3713 (i) Contract and do anything in the name of the
 3714 association which is proper or convenient to terminate the
 3715 affairs of the association.

3716 (7) NATURAL DISASTERS.--

3717 (a) If, after a natural disaster, the identity of the
 3718 directors or their right to hold office is in doubt, if they are
 3719 deceased or unable to act, if they fail or refuse to act, or if
 3720 they cannot be located, any interested person may petition the
 3721 circuit court to determine the identity of the directors or, if
 3722 found to be in the best interests of the shareholders, to
 3723 appoint a receiver to conclude the affairs of the association
 3724 after a hearing following notice to such persons as the court

3725 directs. Lienholders shall be given notice of the petition and
 3726 have the right to propose persons for the consideration by the
 3727 court as receiver. If a receiver is appointed, the court shall
 3728 direct the receiver to provide to all shareholders written
 3729 notice of his or her appointment as receiver. Such notice shall
 3730 be mailed or delivered within 10 days after the appointment.
 3731 Notice by mail to a shareholder shall be sent to the address
 3732 used by the county property appraiser for notice to the
 3733 shareholder.

3734 (b) The receiver shall have all powers given to the board
 3735 pursuant to the declaration, bylaws, and subsection (6), and any
 3736 other powers that are necessary to conclude the affairs of the
 3737 association and are set forth in the order of appointment. The
 3738 appointment of the receiver is subject to the bonding
 3739 requirements of such order. The order shall also provide for the
 3740 payment of a reasonable fee to the receiver from the sources
 3741 identified in the order, which may include rents, profits,
 3742 incomes, maintenance fees, or special assessments collected from
 3743 the cooperative property.

3744 (8) REPORTS AND REPLACEMENT OF RECEIVER.--

3745 (a) The association, receiver, or termination trustee
 3746 shall prepare reports each quarter following the approval of the
 3747 plan of termination setting forth the status and progress of the
 3748 termination, the costs and fees incurred, the date the
 3749 termination is expected to be completed, and the current
 3750 financial condition of the association, receivership, or
 3751 trusteeship and provide copies of the report by regular mail to
 3752 the shareholders and lienors at the mailing address provided to

3753 the association by the shareholders and the lienors.

3754 (b) The shareholders of an association in termination may
 3755 recall or remove members of the board of administration with or
 3756 without cause at any time as provided in s. 718.106(1)(f).

3757 (c) The lienors of an association in termination
 3758 representing at least 50 percent of the outstanding amount of
 3759 liens may petition the court for the appointment of a
 3760 termination trustee, which shall be granted upon good cause
 3761 shown.

3762 (9) PLAN OF TERMINATION.--The plan of termination must be
 3763 a written document executed in the same manner as a deed by
 3764 shareholders having the requisite percentage of voting interests
 3765 to approve the plan and by the termination trustee. A copy of
 3766 the proposed plan of termination shall be given to all
 3767 shareholders, in the same manner as provided for notice of an
 3768 annual meeting, at least 14 days prior to the meeting at which
 3769 the plan of termination is to be voted upon or prior to or
 3770 simultaneously with the distribution of the solicitation seeking
 3771 execution of the plan of termination or written consent to or
 3772 joinder in the plan. A shareholder may document assent to the
 3773 plan by executing the plan or by consent to or joinder in the
 3774 plan in the manner of a deed. A plan of termination and the
 3775 consents or joinders of shareholders and, if required, consents
 3776 or joinders of mortgagees must be recorded in the public records
 3777 of each county in which any portion of the cooperative is
 3778 located. The plan is effective only upon recordation or at a
 3779 later date specified in the plan.

3780 (10) PLAN OF TERMINATION; REQUIRED PROVISIONS.--The plan

CS/HB 1397

2009

3781 of termination must specify:

3782 (a) The name, address, and powers of the termination
3783 trustee.

3784 (b) A date after which the plan of termination is void if
3785 it has not been recorded.

3786 (c) The interests of the respective shareholders in the
3787 association property, common surplus, and other assets of the
3788 association, which shall be the same as the respective interests
3789 of the shareholders in the common areas immediately before the
3790 termination, unless otherwise provided in the declaration.

3791 (d) The interests of the respective shareholders in any
3792 proceeds from the sale of the cooperative property. The plan of
3793 termination may apportion those proceeds pursuant to any method
3794 prescribed in subsection (12). If, pursuant to the plan of
3795 termination, cooperative property or real property owned by the
3796 association is to be sold following termination, the plan must
3797 provide for the sale and may establish any minimum sale terms.

3798 (e) Any interests of the respective shareholders in
3799 insurance proceeds or condemnation proceeds that are not used
3800 for repair or reconstruction at the time of termination. Unless
3801 the declaration expressly addresses the distribution of
3802 insurance proceeds or condemnation proceeds, the plan of
3803 termination may apportion those proceeds pursuant to any method
3804 prescribed in subsection (12).

3805 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL
3806 TERMINATION.--

3807 (a) The plan of termination may provide that each
3808 shareholder retains the exclusive right of possession to the

3809 portion of the real estate that formerly constituted the unit,
 3810 in which case the plan must specify the conditions of
 3811 possession.

3812 (b) In a conditional termination, the plan must specify
 3813 the conditions for termination. A conditional plan does not vest
 3814 title in the termination trustee until the plan and a
 3815 certificate executed by the association with the formalities of
 3816 a deed, confirming that the conditions in the conditional plan
 3817 have been satisfied or waived by the requisite percentage of the
 3818 voting interests, have been recorded.

3819 (12) ALLOCATION OF PROCEEDS OF SALE OF COOPERATIVE
 3820 PROPERTY.--

3821 (a) Unless the declaration expressly provides for the
 3822 allocation of the proceeds of sale of cooperative property, the
 3823 plan of termination must first apportion the proceeds between
 3824 the aggregate value of all units and the value of the common
 3825 areas, based on their respective fair market values immediately
 3826 before the termination, as determined by one or more independent
 3827 appraisers selected by the association or termination trustee.

3828 (b) The portion of proceeds allocated to the units shall
 3829 be further apportioned among the individual units. The
 3830 apportionment is deemed fair and reasonable if it is so
 3831 determined by the shareholders, who may approve the plan of
 3832 termination by any of the following methods:

- 3833 1. The respective values of the units based on the fair
 3834 market values of the units immediately before the termination,
 3835 as determined by one or more independent appraisers selected by
 3836 the association or termination trustee;

3837 2. The respective values of the units based on the most
 3838 recent market value of the units before the termination, as
 3839 provided in the county property appraiser's records; or

3840 3. The respective interests of the units in the common
 3841 elements specified in the cooperative documents immediately
 3842 before the termination.

3843 (c) The methods of apportionment in paragraph (b) do not
 3844 prohibit any other method of apportioning the proceeds of sale
 3845 allocated to the units agreed upon in the plan of termination.
 3846 The portion of the proceeds allocated to the common elements
 3847 shall be apportioned among the units based upon their respective
 3848 interests in the common areas as provided in the declaration.

3849 (d) Liens that encumber a unit shall be transferred to the
 3850 proceeds of sale of the cooperative property and the proceeds of
 3851 sale or other distribution of association property, common
 3852 surplus, or other association assets attributable to such unit
 3853 in their same priority. The proceeds of any sale of cooperative
 3854 property pursuant to a plan of termination may not be deemed to
 3855 be common surplus or association property.

3856 (13) TERMINATION TRUSTEE.--The association shall serve as
 3857 termination trustee unless another person is appointed in the
 3858 plan of termination. If the association is unable, unwilling, or
 3859 fails to act as trustee, any shareholder may petition the court
 3860 to appoint a trustee. Upon the date of the recording or at a
 3861 later date specified in the plan, title to the cooperative
 3862 property vests in the trustee. Unless prohibited by the plan,
 3863 the termination trustee shall be vested with the powers given to
 3864 the board pursuant to the cooperative documents, bylaws, and

3865 subsection (6). If the association is not the termination
 3866 trustee, the trustee's powers shall be coextensive with those of
 3867 the association to the extent not prohibited in the plan of
 3868 termination or the order of appointment. If the association is
 3869 not the termination trustee, the association shall transfer any
 3870 association property to the trustee. If the association is
 3871 dissolved, the trustee shall also have such other powers
 3872 necessary to conclude the affairs of the association.

3873 (14) TITLE VESTED IN TERMINATION TRUSTEE.--If termination
 3874 is pursuant to a plan of termination under subsection (2) or
 3875 subsection (3), the shareholders' rights and title as tenants in
 3876 common in undivided interests in the cooperative property vest
 3877 in the termination trustee when the plan is recorded or at a
 3878 later date specified in the plan. The shareholders thereafter
 3879 become the beneficiaries of the proceeds realized from the plan
 3880 of termination. The termination trustee may deal with the
 3881 cooperative property or any interest therein if the plan confers
 3882 on the trustee the authority to protect, conserve, manage, sell,
 3883 or dispose of the cooperative property. The trustee, on behalf
 3884 of the shareholders, may contract for the sale of real property,
 3885 but the contract is not binding on the shareholders until the
 3886 plan is approved pursuant to subsection (2) or subsection (3).

3887 (15) NOTICE.--

3888 (a) Within 30 days after a plan of termination has been
 3889 recorded, the termination trustee shall deliver by certified
 3890 mail, return receipt requested, notice to all shareholders,
 3891 lienors of the cooperative property, and lienors of all units at
 3892 their last known addresses that a plan of termination has been

CS/HB 1397

2009

3893 recorded. The notice must include the book and page number of
3894 the public records in which the plan was recorded, notice that a
3895 copy of the plan shall be furnished upon written request, and
3896 notice that the shareholder or lienor has the right to contest
3897 the fairness of the plan.

3898 (b) The trustee, within 90 days after the effective date
3899 of the plan, shall provide to the division a certified copy of
3900 the recorded plan, the date the plan was recorded, and the
3901 county, book, and page number of the public records in which the
3902 plan is recorded.

3903 (16) RIGHT TO CONTEST.--A shareholder or lienor may
3904 contest a plan of termination by initiating a summary procedure
3905 pursuant to s. 51.011 within 90 days after the date the plan is
3906 recorded. A shareholder or lienor who does not contest the plan
3907 within the 90-day period is barred from asserting or prosecuting
3908 a claim against the association, the termination trustee, any
3909 shareholder, or any successor in interest to the cooperative
3910 property. In an action contesting a plan of termination, the
3911 person contesting the plan has the burden of pleading and
3912 proving that the apportionment of the proceeds from the sale
3913 among the shareholders was not fair and reasonable. The
3914 apportionment of sale proceeds is presumed fair and reasonable
3915 if it was determined pursuant to the methods prescribed in
3916 subsection (12). The court shall determine the rights and
3917 interests of the parties and order the plan of termination to be
3918 implemented if it is fair and reasonable. If the court
3919 determines that the plan of termination is not fair and
3920 reasonable, the court may void the plan or may modify the plan

3921 to apportion the proceeds in a fair and reasonable manner
 3922 pursuant to this section based upon the proceedings and order
 3923 the modified plan of termination to be implemented. In such
 3924 action, the prevailing party shall recover reasonable attorney's
 3925 fees and costs.

3926 (17) DISTRIBUTION.--

3927 (a) Following termination of the cooperative, the
 3928 cooperative property, association property, common surplus, and
 3929 other assets of the association shall be held by the termination
 3930 trustee, as trustee for shareholders and holders of liens on the
 3931 units, in their order of priority.

3932 (b) Not less than 30 days before the first distribution,
 3933 the termination trustee shall deliver by certified mail, return
 3934 receipt requested, a notice of the estimated distribution to all
 3935 shareholders, lienors of the cooperative property, and lienors
 3936 of each unit at their last known addresses stating a good faith
 3937 estimate of the amount of the distributions to each class and
 3938 the procedures and deadline for notifying the termination
 3939 trustee of any objections to the amount. The deadline must be at
 3940 least 15 days after the date the notice was mailed. The notice
 3941 may be sent with or after the notice required by subsection
 3942 (15). If a shareholder or lienor files a timely objection with
 3943 the termination trustee, the trustee need not distribute the
 3944 funds and property allocated to the respective shareholder or
 3945 lienor until the trustee has had a reasonable time to determine
 3946 the validity of the adverse claim. In the alternative, the
 3947 trustee may interplead the shareholder, lienor, and any other
 3948 person claiming an interest in the unit and deposit the funds

CS/HB 1397

2009

3949 allocated to the unit in the court registry, at which time the
3950 cooperative property, association property, common surplus, and
3951 other assets of the association are free of all claims and liens
3952 of the parties to the suit. In an interpleader action, the
3953 trustee and prevailing party may recover reasonable attorney's
3954 fees and costs.

3955 (c) The proceeds from any sale of cooperative property or
3956 association property and any remaining cooperative property or
3957 association property, common surplus, and other assets shall be
3958 distributed in the following priority:

3959 1. To pay the reasonable termination trustee's fees and
3960 costs and accounting fees and costs.

3961 2. To lienholders of liens recorded prior to the recording
3962 of the cooperative documents.

3963 3. To purchase-money lienholders on units to the extent
3964 necessary to satisfy their liens; however, the distribution may
3965 not exceed a shareholder's share of the proceeds.

3966 4. To creditors of the association, as their interests
3967 appear.

3968 5. To shareholders, the proceeds of any sale of
3969 cooperative property subject to satisfaction of liens on each
3970 unit in their order of priority, in shares specified in the plan
3971 of termination, unless objected to by a shareholder or lienor as
3972 provided in paragraph (b).

3973 6. To shareholders, the remaining cooperative property,
3974 subject to satisfaction of liens on each unit in their order of
3975 priority, in shares specified in the plan of termination, unless
3976 objected to by a shareholder or a lienor as provided in

3977 paragraph (b).

3978 7. To shareholders, the proceeds of any sale of
 3979 association property, the remaining association property, common
 3980 surplus, and other assets of the association, subject to
 3981 satisfaction of liens on each unit in their order of priority,
 3982 in shares specified in the plan of termination, unless objected
 3983 to by a shareholder or a lienor as provided in paragraph (b).

3984 (d) After determining that all known debts and liabilities
 3985 of an association in the process of termination have been paid
 3986 or adequately provided for, the termination trustee shall
 3987 distribute the remaining assets pursuant to the plan of
 3988 termination. If the termination is by court proceeding or
 3989 subject to court supervision, the distribution may not be made
 3990 until any period for the presentation of claims ordered by the
 3991 court has elapsed.

3992 (e) Assets held by an association upon a valid condition
 3993 requiring return, transfer, or conveyance, which condition has
 3994 occurred or will occur, shall be returned, transferred, or
 3995 conveyed in accordance with the condition. The remaining
 3996 association assets shall be distributed pursuant to paragraph
 3997 (c).

3998 (f) Distribution may be made in money, property, or
 3999 securities and in installments or as a lump sum, if it can be
 4000 done fairly and ratably and in conformity with the plan of
 4001 termination. Distribution shall be made as soon as is reasonably
 4002 consistent with the beneficial liquidation of the assets.

4003 (18) ASSOCIATION STATUS.--The termination of a cooperative
 4004 does not change the corporate status of the association that

4005 operated the cooperative property. The association continues to
 4006 exist to conclude its affairs, prosecute and defend actions by
 4007 or against it, collect and discharge obligations, dispose of and
 4008 convey its property, and collect and divide its assets, but not
 4009 to act except as necessary to conclude its affairs.

4010 (19) CREATION OF ANOTHER COOPERATIVE.--The termination of
 4011 a cooperative does not bar the creation by the termination
 4012 trustee of another cooperative affecting any portion of the same
 4013 property.

4014 Section 21. Section 719.1224, Florida Statutes, is created
 4015 to read:

4016 719.1224 Prohibition against SLAPP suits.--

4017 (1) It is the intent of the Legislature to protect the
 4018 right of cooperative shareholders to exercise their rights to
 4019 instruct their representatives and petition for redress of
 4020 grievances before the various governmental entities of this
 4021 state as protected by the First Amendment to the United States
 4022 Constitution and s. 5, Art. I of the State Constitution. The
 4023 Legislature recognizes that strategic lawsuits against public
 4024 participation, or "SLAPP suits," as they are typically referred
 4025 to, have occurred when association members are sued by
 4026 individuals, business entities, or governmental entities arising
 4027 out of a cooperative shareholder's appearance and presentation
 4028 before a governmental entity on matters related to the
 4029 cooperative association. However, it is the public policy of
 4030 this state that governmental entities, business organizations,
 4031 and individuals not engage in SLAPP suits because such actions
 4032 are inconsistent with the right of cooperative shareholders to

4033 participate in the state's institutions of government.
 4034 Therefore, the Legislature finds and declares that prohibiting
 4035 such lawsuits by governmental entities, business entities, and
 4036 individuals against cooperative shareholders who address matters
 4037 concerning their cooperative association will preserve this
 4038 fundamental state policy, preserve the constitutional rights of
 4039 cooperative shareholders, and ensure the continuation of
 4040 representative government in this state. It is the intent of the
 4041 Legislature that such lawsuits be expeditiously disposed of by
 4042 the courts. As used in this subsection, the term "governmental
 4043 entity" means the state, including the executive, legislative,
 4044 and judicial branches of government; the independent
 4045 establishments of the state, counties, municipalities,
 4046 districts, authorities, boards, or commissions; or any agencies
 4047 of these branches that are subject to chapter 286.

4048 (2) A governmental entity, business organization, or
 4049 individual in this state may not file or cause to be filed
 4050 through its employees or agents any lawsuit, cause of action,
 4051 claim, cross-claim, or counterclaim against a cooperative
 4052 shareholder without merit and solely because such cooperative
 4053 shareholder has exercised the right to instruct his or her
 4054 representatives or the right to petition for redress of
 4055 grievances before the various governmental entities of this
 4056 state, as protected by the First Amendment to the United States
 4057 Constitution and s. 5, Art. I of the State Constitution.

4058 (3) A cooperative shareholder sued by a governmental
 4059 entity, business organization, or individual in violation of
 4060 this section has a right to an expeditious resolution of a claim

4061 that the suit is in violation of this section. A cooperative
 4062 shareholder may petition the court for an order dismissing the
 4063 action or granting final judgment in favor of that cooperative
 4064 shareholder. The petitioner may file a motion for summary
 4065 judgment, together with supplemental affidavits, seeking a
 4066 determination that the governmental entity's, business
 4067 organization's, or individual's lawsuit has been brought in
 4068 violation of this section. The governmental entity, business
 4069 organization, or individual shall thereafter file its response
 4070 and any supplemental affidavits. As soon as practicable, the
 4071 court shall set a hearing on the petitioner's motion, which
 4072 shall be held at the earliest possible time after the filing of
 4073 the governmental entity's, business organization's, or
 4074 individual's response. The court may award the cooperative
 4075 shareholder sued by the governmental entity, business
 4076 organization, or individual actual damages arising from the
 4077 governmental entity's, individual's, or business organization's
 4078 violation of this section. A court may treble the damages
 4079 awarded to a prevailing cooperative shareholder and shall state
 4080 the basis for the treble damages award in its judgment. The
 4081 court shall award the prevailing party reasonable attorney's
 4082 fees and costs incurred in connection with a claim that an
 4083 action was filed in violation of this section.

4084 (4) Cooperative associations may not expend association
 4085 funds in prosecuting a SLAPP suit against a cooperative
 4086 shareholder.

4087 Section 22. Section 719.1255, Florida Statutes, is amended
 4088 to read:

4089 719.1255 Alternative resolution of disputes.--The Division
 4090 of Florida Condominiums, Timeshares, and Mobile Homes of the
 4091 Department of Business and Professional Regulation shall provide
 4092 for alternative dispute resolution of matters related to
 4093 cooperative associations and shareholders in a manner like that
 4094 provided to condominium associations and unit owners in
 4095 accordance with s. 718.1255.

4096 Section 23. Section 719.1265, Florida Statutes, is created
 4097 to read:

4098 719.1265 Association emergency powers.--

4099 (1) To the extent allowed by law and unless specifically
 4100 prohibited by the cooperative documents or the bylaws of an
 4101 association, and consistent with the provisions of s. 617.0830,
 4102 the board of directors, in response to damage caused by an event
 4103 for which a state of emergency is declared pursuant to s. 252.36
 4104 in the locale in which the cooperative is located, may, but is
 4105 not required to, exercise the following powers:

4106 (a) Conduct board meetings and shareholder meetings with
 4107 notice given as is practicable. Such notice may be given in any
 4108 practicable manner, including publication, radio, United States
 4109 mail, the Internet, public service announcements, and
 4110 conspicuous posting on the cooperative property or any other
 4111 means the board deems reasonable under the circumstances. Notice
 4112 of board decisions may be communicated as provided in this
 4113 paragraph.

4114 (b) Cancel and reschedule any association meeting.

4115 (c) Name as assistant officers persons who are not
 4116 directors, which assistant officers shall have the same

4117 authority as the executive officers to whom they are assistants
4118 for during the state of emergency to accommodate the incapacity
4119 or unavailability of any officer of the association.

4120 (d) Relocate the association's principal office or
4121 designate alternative principal offices.

4122 (e) Enter into agreements with local counties and
4123 municipalities to assist counties and municipalities with debris
4124 removal.

4125 (f) Implement a disaster plan before or immediately
4126 following the event for which a state of emergency is declared
4127 which may include, but is not limited to, shutting down or off
4128 elevators; electricity; water, sewer, or security systems; or
4129 air conditioners.

4130 (g) Based upon advice of emergency management officials or
4131 upon the advice of licensed professionals retained by the board,
4132 determine any portion of the cooperative property unavailable
4133 for entry or occupancy by shareholders, family members, tenants,
4134 guests, agents, or invitees to protect the health, safety, or
4135 welfare of such persons.

4136 (h) Require the evacuation of the cooperative property in
4137 the event of a mandatory evacuation order in the locale in which
4138 the cooperative is located. Should any shareholder or other
4139 occupant of a cooperative fail or refuse to evacuate the
4140 cooperative property when the board has required evacuation, the
4141 association shall be immune from liability or injury to persons
4142 or property arising from such failure or refusal.

4143 (i) Based upon advice of emergency management officials or
4144 upon the advice of licensed professionals retained by the board,

4145 determine whether the cooperative property can be safely
4146 inhabited or occupied. However, such determination is not
4147 conclusive as to any determination of habitability pursuant to
4148 the declaration.

4149 (j) Mitigate further damage, including taking action to
4150 contract for the removal of debris and to prevent or mitigate
4151 the spread of fungus, including, but not limited to, mold or
4152 mildew, by removing and disposing of wet drywall, insulation,
4153 carpet, cabinetry, or other fixtures on or within the
4154 cooperative property, even if the shareholder is obligated by
4155 the cooperative documents or law to insure or replace those
4156 fixtures and to remove personal property from a unit.

4157 (k) Contract, on behalf of any shareholder or
4158 shareholders, for items or services for which the shareholder or
4159 shareholders are otherwise individually responsible, but which
4160 are necessary to prevent further damage to the cooperative
4161 property. In such event, the shareholder or shareholders on
4162 whose behalf the board has contracted are responsible for
4163 reimbursing the association for the actual costs of the items or
4164 services, and the association may use its lien authority
4165 provided by s. 719.108 to enforce collection of the charges.
4166 Without limitation, such items or services may include the
4167 drying of units, the boarding of broken windows or doors, and
4168 the replacement of damaged air conditioners or air handlers to
4169 provide climate control in the units or other portions of the
4170 property.

4171 (l) Regardless of any provision to the contrary and even
4172 if such authority does not specifically appear in the

4173 cooperative documents or bylaws of the association, levy special
 4174 assessments without a vote of the shareholders.

4175 (m) Without shareholders' approval, borrow money and
 4176 pledge association assets as collateral to fund emergency
 4177 repairs and carry out the duties of the association when
 4178 operating funds are insufficient. This paragraph does not limit
 4179 the general authority of the association to borrow money,
 4180 subject to such restrictions as are contained in the cooperative
 4181 documents or bylaws of the association.

4182 (2) The special powers authorized under subsection (1)
 4183 shall be limited to the time reasonably necessary to protect the
 4184 health, safety, and welfare of the association and the
 4185 shareholders and the shareholders' family members, tenants,
 4186 guests, agents, or invitees and the time reasonably necessary to
 4187 mitigate further damage and make emergency repairs.
 4188 Additionally, unless 20 percent or more of the units are made
 4189 uninhabitable by the emergency, the special powers authorized
 4190 under subsection (1) shall only be exercised during the term of
 4191 the Governor's executive order or proclamation declaring the
 4192 state of emergency in the locale in which the condominium is
 4193 located.

4194 Section 24. Subsections (1) and (4) of section 719.301,
 4195 Florida Statutes, are amended to read:

4196 719.301 Transfer of association control.--

4197 (1) When shareholders ~~unit owners~~ other than the developer
 4198 own 15 percent or more of the units in a cooperative that will
 4199 be operated ultimately by an association, the shareholders ~~unit~~
 4200 ~~owners~~ other than the developer shall be entitled to elect not

4201 less than one-third of the members of the board of
 4202 administration of the association. Shareholders ~~Unit owners~~
 4203 other than the developer are entitled to elect not less than a
 4204 majority of the members of the board of administration of an
 4205 association:

4206 (a) Three years after 50 percent of the units that will be
 4207 operated ultimately by the association have been conveyed to
 4208 purchasers;

4209 (b) Three months after 90 percent of the units that will
 4210 be operated ultimately by the association have been conveyed to
 4211 purchasers;

4212 (c) When all the units that will be operated ultimately by
 4213 the association have been completed, some have been conveyed to
 4214 purchasers, and none of the others are being offered for sale by
 4215 the developer in the ordinary course of business;

4216 (d) When some of the units have been conveyed to
 4217 purchasers and none of the others are being constructed or
 4218 offered for sale by the developer in the ordinary course of
 4219 business; ~~or~~

4220 (e) When the developer files a petition seeking protection
 4221 in bankruptcy;

4222 (f) When a receiver for the developer is appointed by a
 4223 circuit court and is not discharged within 30 days after such
 4224 appointment; or

4225 (g) ~~(e)~~ Seven years after creation of the cooperative
 4226 association,

4227
 4228 whichever occurs first. The developer is entitled to elect at

4229 | least one member of the board of administration of an
 4230 | association as long as the developer holds for sale in the
 4231 | ordinary course of business at least 5 percent in cooperatives
 4232 | with fewer than 500 units and 2 percent in cooperatives with 500
 4233 | or more units in a cooperative operated by the association.
 4234 | After the developer relinquishes control of the association, the
 4235 | developer may exercise the right to vote any developer-owned
 4236 | units in the same manner as any other shareholder ~~unit owner~~
 4237 | except for purposes of reacquiring control of the association or
 4238 | selecting the majority of the members of the board.

4239 | (4) When shareholders ~~unit owners~~ other than the developer
 4240 | elect a majority of the members of the board of administration
 4241 | of an association, the developer shall relinquish control of the
 4242 | association, and the shareholders ~~unit owners~~ shall accept
 4243 | control. Simultaneously, or for the purpose of paragraph (c) not
 4244 | more than 90 days thereafter, the developer shall deliver to the
 4245 | association, at the developer's expense, all property of the
 4246 | shareholders ~~unit owners~~ and of the association held or
 4247 | controlled by the developer, including, but not limited to, the
 4248 | following items, if applicable, as to each cooperative operated
 4249 | by the association:

4250 | (a)1. The original or a photocopy of the recorded
 4251 | cooperative documents and all amendments thereto. If a photocopy
 4252 | is provided, it shall be certified by affidavit of the
 4253 | developer, or an officer or agent of the developer, as being a
 4254 | complete copy of the actual recorded cooperative documents.

4255 | 2. A certified copy of the association's articles of
 4256 | incorporation, or if it is not incorporated, then copies of the

4257 documents creating the association.

4258 3. A copy of the bylaws.

4259 4. The minute books, including all minutes, and other
4260 books and records of the association, if any.

4261 5. Any house rules and regulations which have been
4262 promulgated.

4263 (b) Resignations of officers and members of the board of
4264 administration who are required to resign because the developer
4265 is required to relinquish control of the association.

4266 (c) The financial records, including financial statements
4267 of the association, and source documents since the incorporation
4268 of the association through the date of turnover. The records
4269 shall be audited for the period of the incorporation of the
4270 association or for the period covered by the last audit, if an
4271 audit has been performed for each fiscal year since
4272 incorporation, by an independent certified public accountant.
4273 All financial statements shall be prepared in accordance with
4274 generally accepted accounting standards and shall be audited in
4275 accordance with generally accepted auditing standards as
4276 prescribed by the Board of Accountancy. The accountant
4277 performing the review shall examine to the extent necessary
4278 supporting documents and records, including the cash
4279 disbursements and related paid invoices to determine if
4280 expenditures were for association purposes and the billings,
4281 cash receipts, and related records to determine that the
4282 developer was charged and paid the proper amounts of
4283 assessments.

4284 (d) Association funds or control thereof.

4285 (e) All tangible personal property that is property of the
 4286 association, represented by the developer to be part of the
 4287 common areas or ostensibly part of the common areas, and an
 4288 inventory of that property.

4289 (f) A copy of the plans and specifications utilized in the
 4290 construction or remodeling of improvements and the supplying of
 4291 equipment to the cooperative and in the construction and
 4292 installation of all mechanical components serving the
 4293 improvements and the site, with a certificate in affidavit form
 4294 of the developer, the developer's agent, or an architect or
 4295 engineer authorized to practice in this state that such plans
 4296 and specifications represent, to the best of their knowledge and
 4297 belief, the actual plans and specifications utilized in the
 4298 construction and improvement of the cooperative property and for
 4299 the construction and installation of the mechanical components
 4300 serving the improvements. If the cooperative property has been
 4301 organized as a cooperative more than 3 years after the
 4302 completion of construction or remodeling of the improvements,
 4303 the requirements of this paragraph shall not apply.

4304 (g) A list of the names and addresses, of which the
 4305 developer had knowledge at any time in the development of the
 4306 cooperative, of all contractors, subcontractors, and suppliers
 4307 utilized in the construction or remodeling of the improvements
 4308 and in the landscaping.

4309 (h) Insurance policies.

4310 (i) Copies of any certificates of occupancy which may have
 4311 been issued for the cooperative property.

4312 (j) Any other permits issued by governmental bodies

4313 applicable to the cooperative property in force or issued within
 4314 1 year prior to the date the shareholders ~~unit owners~~ other than
 4315 the developer take control of the association.

4316 (k) All written warranties of the contractor,
 4317 subcontractors, suppliers, and manufacturers, if any, that are
 4318 still effective.

4319 (l) A roster of shareholders ~~unit owners~~ and their
 4320 addresses and telephone numbers, if known, as shown on the
 4321 developer's records.

4322 (m) Leases of the common areas and other leases to which
 4323 the association is a party.

4324 (n) Employment contracts or service contracts in which the
 4325 association is one of the contracting parties or service
 4326 contracts in which the association or the shareholders ~~unit~~
 4327 ~~owners~~ have an obligation or responsibility, directly or
 4328 indirectly, to pay some or all of the fee or charge of the
 4329 person or persons performing the service.

4330 (o) All other contracts to which the association is a
 4331 party.

4332 (p) A turnover inspection report included in the official
 4333 records, under seal of an architect or engineer authorized to
 4334 practice in this state, attesting to required maintenance,
 4335 useful life, and replacement costs of the following applicable
 4336 common areas:

- 4337 1. Roof.
- 4338 2. Structure.
- 4339 3. Fireproofing and fire protection systems.
- 4340 4. Elevators.

- 4341 5. Heating and cooling systems.
- 4342 6. Plumbing.
- 4343 7. Electrical systems.
- 4344 8. Swimming pool or spa and equipment.
- 4345 9. Seawalls.
- 4346 10. Pavement and parking areas.
- 4347 11. Drainage systems.
- 4348 12. Painting.
- 4349 13. Irrigation systems.

4350 Section 25. Section 719.3025, Florida Statutes, is created
 4351 to read:

4352 719.3025 Agreements for operation, maintenance, or
 4353 management of cooperatives; specific requirements.--

4354 (1) No written contract between a party contracting to
 4355 provide maintenance or management services and an association
 4356 which contract provides for operation, maintenance, or
 4357 management of a cooperative association or property serving the
 4358 shareholders of a cooperative shall be valid or enforceable
 4359 unless the contract:

4360 (a) Specifies the services, obligations, and
 4361 responsibilities of the party contracting to provide maintenance
 4362 or management services to the shareholders.

4363 (b) Specifies those costs incurred in the performance of
 4364 those services, obligations, or responsibilities which are to be
 4365 reimbursed by the association to the party contracting to
 4366 provide maintenance or management services.

4367 (c) Provides an indication of how often each service,
 4368 obligation, or responsibility is to be performed, whether stated

4369 for each service, obligation, or responsibility or in categories
 4370 thereof.

4371 (d) Specifies a minimum number of personnel to be employed
 4372 by the party contracting to provide maintenance or management
 4373 services for the purpose of providing service to the
 4374 association.

4375 (e) Discloses any financial or ownership interest which
 4376 the developer, if the developer is in control of the
 4377 association, holds with regard to the party contracting to
 4378 provide maintenance or management services.

4379 (f) Discloses any financial or ownership interest a board
 4380 member or any party providing maintenance or management services
 4381 to the association holds with the contracting party.

4382 (2) In any case in which the party contracting to provide
 4383 maintenance or management services fails to provide such
 4384 services in accordance with the contract, the association is
 4385 authorized to procure such services from some other party and
 4386 shall be entitled to collect any fees or charges paid for
 4387 services performed by another party from the party contracting
 4388 to provide maintenance or management services.

4389 (3) Any services or obligations not stated on the face of
 4390 the contract shall be unenforceable.

4391 (4) Notwithstanding the fact that certain vendors contract
 4392 with associations to maintain equipment or property which is
 4393 made available to serve shareholders, it is the intent of the
 4394 Legislature that this section applies to contracts for
 4395 maintenance or management services for which the association
 4396 pays compensation. This section does not apply to contracts for

4397 services or property made available for the convenience of
 4398 shareholders by lessees or licensees of the association, such as
 4399 coin-operated laundry, food, soft drink, or telephone vendors;
 4400 cable television operators; retail store operators; businesses;
 4401 restaurants; or similar vendors.

4402 Section 26. Section 719.3026, Florida Statutes, is amended
 4403 to read:

4404 719.3026 Contracts for products and services; in writing;
 4405 bids; exceptions.--Associations with 10 or fewer ~~less than 100~~
 4406 units may opt out of the provisions of this section if two-
 4407 thirds of the shareholders ~~unit owners~~ vote to do so, which opt-
 4408 out may be accomplished by a proxy specifically setting forth
 4409 the exception from this section.

4410 (1) All contracts as further described herein or any
 4411 contract that is not to be fully performed within 1 year after
 4412 the making thereof, for the purchase, lease, or renting of
 4413 materials or equipment to be used by the association in
 4414 accomplishing its purposes under this chapter, and all contracts
 4415 for the provision of services, shall be in writing. If a
 4416 contract for the purchase, lease, or renting of materials or
 4417 equipment, or for the provision of services, requires payment by
 4418 the association in an amount which in the aggregate exceeds 5
 4419 percent of the association's budget, including reserves, the
 4420 association shall obtain competitive bids for the materials,
 4421 equipment, or services. Nothing contained herein shall be
 4422 construed to require the association to accept the lowest bid.

4423 (2) (a) ~~1-~~ Notwithstanding the foregoing, contracts with
 4424 employees of the association, and contracts for attorney,

CS/HB 1397

2009

4425 accountant, architect, community association manager, timeshare
4426 management firm, engineering, and landscape architect services
4427 shall not be subject to the provisions of this section.

4428 ~~2. A contract executed before January 1, 1992, and any~~
4429 ~~renewal thereof, is not subject to the competitive bid~~
4430 ~~requirements of this section. If a contract was awarded under~~
4431 ~~the competitive bid procedures of this section, any renewal of~~
4432 ~~that contract is not subject to such competitive bid~~
4433 ~~requirements if the contract contains a provision that allows~~
4434 ~~the board to cancel the contract on 30 days' notice. Materials,~~
4435 ~~equipment, or services provided to a cooperative pursuant to a~~
4436 ~~local government franchise agreement by a franchise holder are~~
4437 ~~not subject to the competitive bid requirement. A contract with~~
4438 ~~a manager, if made by a competitive bid, may be made for up to 3~~
4439 ~~years. A condominium whose declaration or bylaws provides for~~
4440 ~~competitive bidding for services may operate under the~~
4441 ~~provisions of that declaration or bylaws in lieu of this section~~
4442 ~~if those provisions are not less stringent than the requirements~~
4443 ~~of this section.~~

4444 (b) This section does not limit the ability of an
4445 association to obtain needed products and services in an
4446 emergency.

4447 (c) This section does not apply if the business entity
4448 with which the association desires to enter into a contract is
4449 the only source of supply within the county serving the
4450 association.

4451 (d) Nothing contained in this subsection shall excuse a
4452 party contracting to provide maintenance or management services

4453 from compliance with s. 719.3025.

4454 (3) As to any contract or other transaction between an
 4455 association and one or more of its directors or any other
 4456 corporation, firm, association, or entity in which one or more
 4457 of its directors are directors or officers or are financially
 4458 interested:

4459 (a) The association shall comply with the requirements of
 4460 s. 617.0832.

4461 (b) The disclosures required by s. 617.0832 shall be
 4462 entered into the written minutes of the meeting.

4463 (c) Approval of the contract or other transaction shall
 4464 require an affirmative vote of two-thirds of the directors
 4465 present.

4466 (d) At the next regular or special meeting of the
 4467 shareholders, the existence of the contract or other transaction
 4468 shall be disclosed to the shareholders. Upon motion of any
 4469 shareholder, the contract or transaction shall be brought up for
 4470 a vote and may be canceled by a majority vote of the
 4471 shareholders present. Should the shareholders cancel the
 4472 contract, the association shall only be liable for the
 4473 reasonable value of goods and services provided up to the time
 4474 of cancellation and shall not be liable for any termination fee,
 4475 liquidated damages, or other form of penalty for such
 4476 cancellation.

4477 Section 27. Section 719.303, Florida Statutes, is amended
 4478 to read:

4479 719.303 Obligations of shareholders ~~owners~~.--

4480 (1) Each shareholder ~~unit-owner~~, each tenant and other

4481 invitee, and each association shall be governed by, and shall
 4482 comply with the provisions of, this chapter, the cooperative
 4483 documents, the documents creating the association, and the
 4484 association bylaws, and the provisions thereof shall be deemed
 4485 expressly incorporated into any lease of a unit. Actions for
 4486 damages or for injunctive relief, or both, for failure to comply
 4487 with these provisions may be brought by the association or by a
 4488 shareholder ~~unit owner~~ against:

- 4489 (a) The association.
- 4490 (b) A shareholder ~~unit owner~~.
- 4491 (c) Directors designated by the developer, for actions
 4492 taken by them prior to the time control of the association is
 4493 assumed by shareholders ~~unit owners~~ other than the developer.
- 4494 (d) Any director who willfully and knowingly fails to
 4495 comply with these provisions.
- 4496 (e) Any tenant leasing a unit, and any other invitee
 4497 occupying a unit.

4498
 4499 The prevailing party in any such action or in any action in
 4500 which the purchaser claims a right of voidability based upon
 4501 contractual provisions as required in s. 719.503(1)(a) is
 4502 entitled to recover reasonable attorney's fees. A shareholder
 4503 ~~unit owner~~ prevailing in an action between the association and
 4504 the shareholder ~~unit owner~~ under this section, in addition to
 4505 recovering his or her reasonable attorney's fees, may recover
 4506 additional amounts as determined by the court to be necessary to
 4507 reimburse the shareholder ~~unit owner~~ for his or her share of
 4508 assessments levied by the association to fund its expenses of

4509 the litigation. This relief does not exclude other remedies
 4510 provided by law. Actions arising under this subsection shall not
 4511 be deemed to be actions for specific performance.

4512 (2) A provision of this chapter may not be waived if the
 4513 waiver would adversely affect the rights of a shareholder ~~unit~~
 4514 ~~owner~~ or the purpose of the provision, except that shareholders
 4515 ~~unit owners~~ or members of a board of administration may waive
 4516 notice of specific meetings in writing if provided by the
 4517 bylaws. Any instrument given in writing by the shareholder ~~unit~~
 4518 ~~owner~~ or purchaser to an escrow agent may be relied upon by an
 4519 escrow agent, whether or not such instruction and the payment of
 4520 funds thereunder might constitute a waiver of any provision of
 4521 this chapter.

4522 (3) If the cooperative documents so provide, the
 4523 association may levy reasonable fines against a shareholder ~~unit~~
 4524 ~~owner~~ for failure of the shareholder ~~unit owner~~ or his or her
 4525 licensee or invitee or the unit's occupant to comply with any
 4526 provision of the cooperative documents or reasonable rules of
 4527 the association. No fine shall become a lien against a unit. No
 4528 fine shall exceed \$100 per violation. However, a fine may be
 4529 levied on the basis of each day of a continuing violation, with
 4530 a single notice and opportunity for hearing, provided that no
 4531 such fine shall in the aggregate exceed \$1,000. No fine may be
 4532 levied except after giving reasonable notice and opportunity for
 4533 a hearing to the shareholder ~~unit owner~~ and, if applicable, his
 4534 or her licensee or invitee. The hearing shall be held before a
 4535 committee of other shareholders who are neither board members
 4536 nor persons residing in a board member's household ~~unit owners~~.

CS/HB 1397

2009

4537 If the committee does not agree with the fine, it shall not be
 4538 levied. This subsection does not apply to unoccupied units.

4539 Section 28. Section 719.501, Florida Statutes, is amended
 4540 to read:

4541 719.501 Authority, responsibilities, ~~Powers~~ and duties of
 4542 Division of Florida Condominiums, Timeshares, and Mobile
 4543 Homes.--

4544 (1) The Division of Florida Condominiums, Timeshares, and
 4545 Mobile Homes of the Department of Business and Professional
 4546 Regulation, referred to as the "division" in this part, in
 4547 addition to other powers and duties prescribed by chapter 718,
 4548 has the power to enforce and ensure compliance with this chapter
 4549 and adopted rules relating to the development, construction,
 4550 sale, lease, ownership, operation, and management of residential
 4551 cooperative units. In performing its duties, the division has
 4552 complete jurisdiction to investigate complaints and enforce
 4553 compliance with the provisions of this chapter. ~~shall have the~~
 4554 ~~following powers and duties:~~

4555 (a) The division may make necessary public or private
 4556 investigations within or outside this state to determine whether
 4557 any person has violated this chapter or any rule or order
 4558 hereunder, to aid in the enforcement of this chapter, or to aid
 4559 in the adoption of rules or forms hereunder.

4560 (b) The division may require or permit any person to file
 4561 a statement in writing, under oath or otherwise, as the division
 4562 determines, as to the facts and circumstances concerning a
 4563 matter to be investigated.

4564 (c) For the purpose of any investigation under this

CS/HB 1397

2009

4565 chapter, the division director or any officer or employee
4566 designated by the division director may administer oaths or
4567 affirmations, subpoena witnesses and compel their attendance,
4568 take evidence, and require the production of any matter which is
4569 relevant to the investigation, including the existence,
4570 description, nature, custody, condition, and location of any
4571 books, documents, or other tangible things and the identity and
4572 location of persons having knowledge of relevant facts or any
4573 other matter reasonably calculated to lead to the discovery of
4574 material evidence. Upon failure by a person to obey a subpoena
4575 or to answer questions propounded by the investigating officer
4576 and upon reasonable notice to all persons affected thereby, the
4577 division may apply to the circuit court for an order compelling
4578 compliance.

4579 (d) Notwithstanding any remedies available to shareholders
4580 ~~unit owners~~ and associations, if the division has reasonable
4581 cause to believe that a violation of any provision of this
4582 chapter or related rule has occurred, the division may institute
4583 enforcement proceedings in its own name against a developer,
4584 association, officer, or member of the board, or its assignees
4585 or agents, as follows:

4586 1. The division may permit a person whose conduct or
4587 actions may be under investigation to waive formal proceedings
4588 and enter into a consent proceeding whereby orders, rules, or
4589 letters of censure or warning, whether formal or informal, may
4590 be entered against the person.

4591 2. The division may issue an order requiring the
4592 developer, association, officer, or member of the board, or its

4593 | assignees or agents, or any community association manager or
 4594 | community association management firm to cease and desist from
 4595 | the unlawful practice and take such affirmative action as in the
 4596 | judgment of the division will carry out the purposes of this
 4597 | chapter. If the division finds that a developer, association,
 4598 | officer, or member of the board of directors, or its assignees
 4599 | or agents, or any community association manager or community
 4600 | association management firm is violating or is about to violate
 4601 | any provision of this chapter, any rule adopted or order issued
 4602 | by the division, or any written agreement entered into with the
 4603 | division, and presents an immediate danger to the public
 4604 | requiring an immediate final order, it may issue an emergency
 4605 | cease and desist order reciting with particularity the facts
 4606 | underlying such findings. The emergency cease and desist order
 4607 | is effective for 90 days. If the division begins nonemergency
 4608 | cease and desist proceedings, the emergency cease and desist
 4609 | order remains effective until the conclusion of the proceedings
 4610 | under ss. 120.569 and 120.57. ~~Such affirmative action may~~
 4611 | ~~include, but is not limited to, an order requiring a developer~~
 4612 | ~~to pay moneys determined to be owed to a condominium~~
 4613 | ~~association.~~

4614 | 3. If a developer fails to pay any restitution determined
 4615 | by the division to be owed, plus any accrued interest at the
 4616 | highest rate permitted by law, within 30 days after expiration
 4617 | of any appellate time period of a final order requiring payment
 4618 | of restitution or the conclusion of any appeal thereof,
 4619 | whichever is later, the division shall bring an action in
 4620 | circuit or county court on behalf of any association, class of

4621 shareholders, lessees, or purchasers for restitution,
 4622 declaratory relief, injunctive relief, or any other available
 4623 remedy. The division may also temporarily revoke its acceptance
 4624 of the filing for the developer to which the restitution relates
 4625 until payment of restitution is made. ~~The division may bring an~~
 4626 action in circuit court on behalf of a class of unit owners,
 4627 lessees, or purchasers for declaratory relief, injunctive
 4628 relief, or restitution.

4629 4. The division may petition the court for the appointment
 4630 of a receiver or conservator. If appointed, the receiver or
 4631 conservator may take action to implement the court order to
 4632 ensure the performance of the order and to remedy any breach
 4633 thereof. In addition to all other means provided by law for the
 4634 enforcement of an injunction or temporary restraining order, the
 4635 circuit court may impound or sequester the property of a party
 4636 defendant, including books, papers, documents, and related
 4637 records, and allow the examination and use of the property by
 4638 the division and a court-appointed receiver or conservator.

4639 5. The division may apply to the circuit court for an
 4640 order of restitution in which the defendant in an action brought
 4641 pursuant to subparagraph 4. shall be ordered to make restitution
 4642 of those sums shown by the division to have been obtained by the
 4643 defendant in violation of this chapter. Such restitution shall,
 4644 at the option of the court, be payable to the conservator or
 4645 receiver appointed pursuant to subparagraph 4. or directly to
 4646 the persons whose funds or assets were obtained in violation of
 4647 this chapter.

4648 6.4. The division may impose a civil penalty against a

CS/HB 1397

2009

4649 developer or association, or its assignees or agents, for any
4650 violation of this chapter or ~~related~~ rule adopted under this
4651 chapter. The division may impose a civil penalty individually
4652 against any officer or board member who willfully and knowingly
4653 violates a provision of this chapter, a rule adopted pursuant to
4654 this chapter, or a final order of the division; may order the
4655 removal of such individual as an officer or from the board of
4656 directors or as an officer of the association; and may prohibit
4657 such individual from serving as an officer or on the board of a
4658 community association for a stated period of time. The term
4659 "willfully and knowingly" means that the division informed the
4660 officer or board member that his or her action or intended
4661 action violates this chapter, a rule adopted under this chapter,
4662 or a final order of the division, and that the officer or board
4663 member refused to comply with the requirements of this chapter,
4664 a rule adopted under this chapter, or a final order of the
4665 division. The division, prior to initiating formal agency action
4666 under chapter 120, shall afford the officer or board member an
4667 opportunity to voluntarily comply with this chapter, a rule
4668 adopted under this chapter, or a final order of the division. An
4669 officer or board member who complies within 10 days is not
4670 subject to a civil penalty. A penalty may be imposed on the
4671 basis of each day of continuing violation, but in no event shall
4672 the penalty for any offense exceed \$5,000. By January 1, 1998,
4673 the division shall adopt, by rule, penalty guidelines applicable
4674 to possible violations or to categories of violations of this
4675 chapter or rules adopted by the division. The guidelines must
4676 specify a meaningful range of civil penalties for each such

4677 violation of the statute and rules and must be based upon the
 4678 harm caused by the violation, the repetition of the violation,
 4679 and upon such other factors deemed relevant by the division. For
 4680 example, the division may consider whether the violations were
 4681 committed by a developer or shareholder-controlled ~~owner-~~
 4682 ~~controlled~~ association, the size of the association, and other
 4683 factors. The guidelines must designate the possible mitigating
 4684 or aggravating circumstances that justify a departure from the
 4685 range of penalties provided by the rules. It is the legislative
 4686 intent that minor violations be distinguished from those which
 4687 endanger the health, safety, or welfare of the cooperative
 4688 residents or other persons and that such guidelines provide
 4689 reasonable and meaningful notice to the public of likely
 4690 penalties that may be imposed for proscribed conduct. This
 4691 subsection does not limit the ability of the division to
 4692 informally dispose of administrative actions or complaints by
 4693 stipulation, agreed settlement, or consent order. All amounts
 4694 collected shall be deposited with the Chief Financial Officer to
 4695 the credit of the Division of Florida Condominiums, Timeshares,
 4696 and Mobile Homes Trust Fund. If a developer fails to pay the
 4697 civil penalty and the amount deemed to be owed to the
 4698 association, the division shall thereupon issue an order
 4699 directing that such developer cease and desist from further
 4700 operation until such time as the civil penalty is paid or may
 4701 pursue enforcement of the penalty in a court of competent
 4702 jurisdiction. If an association fails to pay the civil penalty,
 4703 the division shall thereupon pursue enforcement in a court of
 4704 competent jurisdiction, and the order imposing the civil penalty

CS/HB 1397

2009

4705 or the cease and desist order shall not become effective until
4706 20 days after the date of such order. Any action commenced by
4707 the division shall be brought in the county in which the
4708 division has its executive offices or in the county where the
4709 violation occurred.

4710 7. If a shareholder presents the division with proof that
4711 the shareholder has requested access to official records in
4712 writing by certified mail, and that after 10 days the
4713 shareholder again made the same request for access to official
4714 records in writing by certified mail, and that more than 10 days
4715 has elapsed since the second request and the association has
4716 still failed or refused to provide access to official records as
4717 required by this chapter, the division shall issue a subpoena
4718 requiring production of the requested records where the records
4719 are kept pursuant to s. 719.104.

4720 8. In addition to subparagraph 6., the division may seek
4721 the imposition of a civil penalty through the circuit court for
4722 any violation for which the division may issue a notice to show
4723 cause under paragraph (r). The civil penalty shall be at least
4724 \$500 but no more than \$5,000 for each violation. The court may
4725 also award to the prevailing party court costs and reasonable
4726 attorney's fees and, if the division prevails, may also award
4727 reasonable costs of investigation.

4728 9. When the division finds that any person has derived an
4729 improper personal benefit from a cooperative association, the
4730 division shall order the person to pay restitution to the
4731 association and shall order the person to pay to the division
4732 the costs of investigation and prosecution.

4733 (e) The division may prepare and disseminate a prospectus
 4734 and other information to assist prospective shareholders ~~owners,~~
 4735 purchasers, lessees, and developers of residential cooperatives
 4736 in assessing the rights, privileges, and duties pertaining
 4737 thereto.

4738 (f) The division has authority to adopt rules pursuant to
 4739 ss. 120.536(1) and 120.54 to implement and enforce the
 4740 provisions of this chapter.

4741 (g) The division shall establish procedures for providing
 4742 notice to an association and the developer during the period
 4743 when the developer controls the association when the division is
 4744 considering the issuance of a declaratory statement with respect
 4745 to the cooperative documents governing such cooperative
 4746 community.

4747 (h) The division shall furnish each association which pays
 4748 the fees required by paragraph (2) (a) a copy of this chapter
 4749 ~~act, subsequent changes to this act~~ on an annual basis, as an
 4750 ~~amended version of this act as it becomes available from the~~
 4751 ~~Secretary of State's office on a biennial basis,~~ and the rules
 4752 adopted thereto on an annual basis.

4753 (i) The division shall annually provide each association
 4754 with a summary of declaratory statements and formal legal
 4755 opinions relating to the operations of cooperatives which were
 4756 rendered by the division during the previous year.

4757 ~~(j) The division shall adopt uniform accounting~~
 4758 ~~principles, policies, and standards to be used by all~~
 4759 ~~associations in the preparation and presentation of all~~
 4760 ~~financial statements required by this chapter. The principles,~~

4761 ~~policies, and standards shall take into consideration the size~~
 4762 ~~of the association and the total revenue collected by the~~
 4763 ~~association.~~

4764 (j)~~(*)~~ The division shall provide training and educational
 4765 programs for cooperative association board members and
 4766 shareholders ~~unit owners~~. The training may, in the division's
 4767 discretion, include web-based electronic media and live training
 4768 and seminars in various locations throughout the state. The
 4769 division shall have the authority to review and approve
 4770 educational and training programs for board members and
 4771 shareholders offered by providers and shall maintain a current
 4772 list of approved programs and providers and shall make such list
 4773 available to board members and shareholders in a reasonable and
 4774 cost-effective manner.

4775 (k)~~(l)~~ The division shall maintain a toll-free telephone
 4776 number accessible to cooperative shareholders ~~unit owners~~.

4777 (l) The division shall develop a program to certify both
 4778 volunteer and paid mediators to provide mediation of cooperative
 4779 disputes. The division shall provide, upon request, a list of
 4780 such mediators to any association, shareholder, or other
 4781 participant in arbitration proceedings under s. 719.1255
 4782 requesting a copy of the list. The division shall include on the
 4783 list of volunteer mediators only the names of persons who have
 4784 received at least 20 hours of training in mediation techniques
 4785 or who have mediated at least 20 disputes. In order to become
 4786 initially certified by the division, paid mediators must be
 4787 certified by the Supreme Court to mediate court cases in county
 4788 or circuit courts. However, the division may adopt, by rule,

4789 additional factors for the certification of paid mediators,
4790 which factors must be related to experience, education, or
4791 background. Any person initially certified as a paid mediator by
4792 the division must, in order to continue to be certified, comply
4793 with the factors or requirements imposed by rules adopted by the
4794 division.

4795 (m) When a complaint is made to the division, the division
4796 shall conduct its inquiry with reasonable dispatch and with due
4797 regard to the interests of the affected parties. Within 30 days
4798 after receipt of a complaint, the division shall acknowledge the
4799 complaint in writing and notify the complainant whether the
4800 complaint is within the jurisdiction of the division and whether
4801 additional information is needed by the division from the
4802 complainant. The division shall conduct its investigation and
4803 shall, within 90 days after receipt of the original complaint or
4804 timely requested additional information, take action upon the
4805 complaint. However, the failure to complete the investigation
4806 within 90 days does not prevent the division from continuing the
4807 investigation, accepting or considering evidence obtained or
4808 received after 90 days, or taking administrative action if
4809 reasonable cause exists to believe that a violation of this
4810 chapter or a rule of the division has occurred. If an
4811 investigation is not completed within the time limits
4812 established in this paragraph, the division shall, on a monthly
4813 basis, notify the complainant in writing of the status of the
4814 investigation. When reporting its action to the complainant, the
4815 division shall inform the complainant of any right to a hearing
4816 pursuant to ss. 120.569 and 120.57.

4817 (n) Cooperative association directors, officers, and
 4818 employees; cooperative developers; community association
 4819 managers; and community association management firms have an
 4820 ongoing duty to reasonably cooperate with the division in any
 4821 investigation pursuant to this section. The division shall refer
 4822 to local law enforcement authorities any person whom the
 4823 division believes has altered, destroyed, concealed, or removed
 4824 any record, document, or thing required to be kept or maintained
 4825 by this chapter with the purpose to impair its verity or
 4826 availability in the department's investigation.

4827 (o) The division may:

- 4828 1. Contract with agencies in this state or other
- 4829 jurisdictions to perform investigative functions; or
- 4830 2. Accept grants-in-aid from any source.

4831 (p) The division shall cooperate with similar agencies in
 4832 other jurisdictions to establish uniform filing procedures and
 4833 forms, public offering statements, advertising standards, and
 4834 rules and common administrative practices.

4835 (q) The division shall consider notice to a developer to
 4836 be complete when it is delivered to the developer's address
 4837 currently on file with the division.

4838 (r) In addition to its enforcement authority, the division
 4839 may issue a notice to show cause, which shall provide for a
 4840 hearing, upon written request, in accordance with chapter 120.

4841 (s) In the reports required by s. 718.501(1)(s), the
 4842 division shall also report the same information for cooperative
 4843 associations. The division may combine figures and issues into
 4844 one report covering both condominiums and cooperatives. The

4845 ~~division shall develop a program to certify both volunteer and~~
4846 ~~paid mediators to provide mediation of cooperative disputes. The~~
4847 ~~division shall provide, upon request, a list of such mediators~~
4848 ~~to any association, unit owner, or other participant in~~
4849 ~~arbitration proceedings under s. 718.1255 requesting a copy of~~
4850 ~~the list. The division shall include on the list of voluntary~~
4851 ~~mediators only persons who have received at least 20 hours of~~
4852 ~~training in mediation techniques or have mediated at least 20~~
4853 ~~disputes. In order to become initially certified by the~~
4854 ~~division, paid mediators must be certified by the Supreme Court~~
4855 ~~to mediate court cases in county or circuit courts. However, the~~
4856 ~~division may adopt, by rule, additional factors for the~~
4857 ~~certification of paid mediators, which factors must be related~~
4858 ~~to experience, education, or background. Any person initially~~
4859 ~~certified as a paid mediator by the division must, in order to~~
4860 ~~continue to be certified, comply with the factors or~~
4861 ~~requirements imposed by rules adopted by the division.~~

4862 (2) (a) Each cooperative association shall pay to the
4863 division, on or before January 1 of each year, an annual fee in
4864 the amount of \$4 for each residential unit in cooperatives
4865 operated by the association. If the fee is not paid by March 1,
4866 then the association shall be assessed a penalty of 10 percent
4867 of the amount due, and the association shall not have the
4868 standing to maintain or defend any action in the courts of this
4869 state until the amount due, plus any penalty, is paid.

4870 (b) All fees shall be deposited in the Division of Florida
4871 Condominiums, Timeshares, and Mobile Homes Trust Fund as
4872 provided by law.

4873 Section 29. Section 719.5011, Florida Statutes, is created
 4874 to read:

4875 719.5011 Ombudsman.--The Office of the Condominium
 4876 Ombudsman, created in s. 718.5011, shall assist cooperative
 4877 associations and cooperative shareholders and have the powers
 4878 and duties related to cooperative associations and cooperative
 4879 shareholders as if such associations and shareholders were
 4880 condominium associations and condominium shareholders.

4881 Section 30. Paragraph (b) of subsection (1) and paragraph
 4882 (a) of subsection (2) of section 719.503, Florida Statutes, are
 4883 amended to read:

4884 719.503 Disclosure prior to sale.--

4885 (1) DEVELOPER DISCLOSURE.--

4886 (b) Copies of documents to be furnished to prospective
 4887 buyer or lessee.--Until such time as the developer has furnished
 4888 the documents listed below to a person who has entered into a
 4889 contract to purchase a unit or lease it for more than 5 years,
 4890 the contract may be voided by that person, entitling the person
 4891 to a refund of any deposit together with interest thereon as
 4892 provided in s. 719.202. The contract may be terminated by
 4893 written notice from the proposed buyer or lessee delivered to
 4894 the developer within 15 days after the buyer or lessee receives
 4895 all of the documents required by this section. The developer
 4896 shall not close for 15 days following the execution of the
 4897 agreement and delivery of the documents to the buyer as
 4898 evidenced by a receipt for documents signed by the buyer unless
 4899 the buyer is informed in the 15-day voidability period and
 4900 agrees to close prior to the expiration of the 15 days. The

4901 developer shall retain in his or her records a separate signed
 4902 agreement as proof of the buyer's agreement to close prior to
 4903 the expiration of said voidability period. Said proof shall be
 4904 retained for a period of 5 years after the date of the closing
 4905 transaction. The documents to be delivered to the prospective
 4906 buyer are the prospectus or disclosure statement with all
 4907 exhibits, if the development is subject to the provisions of s.
 4908 719.504, or, if not, then copies of the following which are
 4909 applicable:

4910 1. The question and answer sheet described in s. 719.504,
 4911 and cooperative documents, or the proposed cooperative documents
 4912 if the documents have not been recorded, which shall include the
 4913 certificate of a surveyor approximately representing the
 4914 locations required by s. 719.104.

4915 2. The documents creating the association.

4916 3. The bylaws.

4917 4. The ground lease or other underlying lease of the
 4918 cooperative.

4919 5. The management contract, maintenance contract, and
 4920 other contracts for management of the association and operation
 4921 of the cooperative and facilities used by the shareholders ~~unit~~
 4922 ~~owners~~ having a service term in excess of 1 year, and any
 4923 management contracts that are renewable.

4924 6. The estimated operating budget for the cooperative and
 4925 a schedule of expenses for each type of unit, including fees
 4926 assessed to a shareholder who has exclusive use of limited
 4927 common areas, where such costs are shared only by those entitled
 4928 to use such limited common areas.

4929 7. The lease of recreational and other facilities that
 4930 will be used only by shareholders ~~unit-owners~~ of the subject
 4931 cooperative.

4932 8. The lease of recreational and other common areas that
 4933 will be used by shareholders ~~unit-owners~~ in common with
 4934 shareholders ~~unit-owners~~ of other cooperatives.

4935 9. The form of unit lease if the offer is of a leasehold.

4936 10. Any declaration of servitude of properties serving the
 4937 cooperative but not owned by shareholders ~~unit-owners~~ or leased
 4938 to them or the association.

4939 11. If the development is to be built in phases or if the
 4940 association is to manage more than one cooperative, a
 4941 description of the plan of phase development or the arrangements
 4942 for the association to manage two or more cooperatives.

4943 12. If the cooperative is a conversion of existing
 4944 improvements, the statements and disclosure required by s.
 4945 719.616.

4946 13. The form of agreement for sale or lease of units.

4947 14. A copy of the floor plan of the unit and the plot plan
 4948 showing the location of the residential buildings and the
 4949 recreation and other common areas.

4950 15. A copy of all covenants and restrictions which will
 4951 affect the use of the property and which are not contained in
 4952 the foregoing.

4953 16. If the developer is required by state or local
 4954 authorities to obtain acceptance or approval of any dock or
 4955 marina facilities intended to serve the cooperative, a copy of
 4956 any such acceptance or approval acquired by the time of filing

4957 with the division pursuant to s. 719.502(1) or a statement that
 4958 such acceptance or approval has not been acquired or received.

4959 17. Evidence demonstrating that the developer has an
 4960 ownership, leasehold, or contractual interest in the land upon
 4961 which the cooperative is to be developed.

4962 (2) NONDEVELOPER DISCLOSURE.--

4963 (a) Each shareholder ~~unit owner~~ who is not a developer as
 4964 defined by this chapter must comply with the provisions of this
 4965 subsection prior to the sale of his or her interest in the
 4966 association. Each prospective purchaser who has entered into a
 4967 contract for the purchase of an interest in a cooperative is
 4968 entitled, at the seller's expense, to a current copy of the
 4969 articles of incorporation of the association, the bylaws, and
 4970 rules of the association, as well as a copy of the question and
 4971 answer sheet as provided in s. 719.504. On and after July 1,
 4972 2009, the prospective purchaser shall also be entitled to
 4973 receive from the seller a copy of a governance form. Such form
 4974 shall be provided by the division summarizing governance of
 4975 cooperative associations. In addition to such other information
 4976 as the division considers helpful to a prospective purchaser in
 4977 understanding association governance, the governance form shall
 4978 address the following subjects:

4979 1. The role of the board in conducting the day-to-day
 4980 affairs of the association on behalf of, and in the best
 4981 interests of, the shareholders.

4982 2. The board's responsibility to provide advance notice of
 4983 board and shareholder meetings.

4984 3. The rights of shareholders to attend and speak at board

4985 and shareholder meetings.

4986 4. The responsibility of the board and shareholders with
 4987 respect to maintenance of the cooperative property.

4988 5. The responsibility of the board and shareholders to
 4989 abide by the cooperative documents, this chapter, rules adopted
 4990 by the division, and reasonable rules adopted by the board.

4991 6. Shareholders' rights to inspect and copy association
 4992 records and the limitations on such rights.

4993 7. Remedies available to shareholders with respect to
 4994 actions by the board which may be abusive or beyond the board's
 4995 power and authority.

4996 8. The right of the board to hire a property management
 4997 firm, subject to its own primary responsibility for such
 4998 management.

4999 9. The responsibility of shareholders with regard to
 5000 payment of regular or special assessments necessary for the
 5001 operation of the property and the potential consequences of
 5002 failure to pay such assessments.

5003 10. The voting rights of shareholders.

5004 11. Rights and obligations of the board in enforcement of
 5005 rules in the cooperative documents and rules adopted by the
 5006 board.

5007

5008 The governance form shall also include the following statement
 5009 in conspicuous type: "This publication is intended as an
 5010 informal educational overview of cooperative governance. In the
 5011 event of a conflict, the provisions of chapter 719, Florida
 5012 Statutes, rules adopted by the Division of Florida Condominiums,

5013 Timeshares, and Mobile Homes of the Department of Business and
 5014 Professional Regulation, the provisions of the cooperative
 5015 documents, and reasonable rules adopted by the cooperative
 5016 association's board of directors prevail over the contents of
 5017 this publication."

5018 Section 31. Subsections (12), (13), and (14) are added to
 5019 section 720.303, Florida Statutes, to read:

5020 720.303 Association powers and duties; meetings of board;
 5021 official records; budgets; financial reporting; association
 5022 funds; recalls.--

5023 (12) LIMIT ON EXPENDITURES.--It shall be unlawful for the
 5024 board to make any expenditure of association funds or to make
 5025 any in-kind contribution of association assets that does not
 5026 relate to the purposes for which the association is organized.

5027 (a) The board shall not make any contribution to a
 5028 campaign or committee of continuous existence governed by
 5029 chapter 105 or chapter 106.

5030 (b) The board shall not make any contribution to a
 5031 charitable organization if the association does not receive a
 5032 direct benefit from the organization.

5033 (c) The board shall not make any expenditure in order to
 5034 retain a person or firm for the purposes of lobbying.

5035 (d) Members of the board shall be jointly and severally
 5036 liable to reimburse the association for any contribution,
 5037 expenditure, or in-kind contribution made in violation of this
 5038 subsection.

5039 (13) BORROWING.--The borrowing of funds or committing to a
 5040 line of credit by the board of administration shall be

CS/HB 1397

2009

5041 considered a special assessment, and any meeting of the board of
 5042 administration to discuss such matters shall be noticed as
 5043 provided in paragraph (2)(c). The board shall not have the
 5044 authority to enter into a line of credit or borrow funds for any
 5045 purpose unless the specific use of the funds from the line of
 5046 credit or loan is set forth in the notice of meeting with the
 5047 same specificity as required for a special assessment or unless
 5048 the borrowing or line of credit has received the prior approval
 5049 of not less than two-thirds of the voting interests of the
 5050 association.

5051 (14) TRANSFER FEES.--No charge may be made by the
 5052 association or any body thereof in connection with the sale,
 5053 mortgage, lease, sublease, or other transfer of a parcel.
 5054 Nothing in this subsection shall be construed to prohibit an
 5055 association from requiring as a condition to permitting the
 5056 letting or renting of a parcel, when the association has such
 5057 authority in the documents, the depositing into an escrow
 5058 account maintained by the association a security deposit in an
 5059 amount not to exceed the equivalent of 1 month's rent. The
 5060 security deposit shall protect against damages to the common
 5061 areas or association property. Within 15 days after a tenant
 5062 vacates the premises, the association shall refund the full
 5063 security deposit or give written notice to the tenant of any
 5064 claim made against the security. Disputes under this subsection
 5065 shall be handled in the same fashion as disputes concerning
 5066 security deposits under s. 83.49.

5067 Section 32. Paragraph (a) of subsection (2) of section
 5068 720.304, Florida Statutes, is amended to read:

CS/HB 1397

2009

5069 720.304 Right of owners to peaceably assemble; display of
 5070 flag; SLAPP suits prohibited.--

5071 (2) (a) Any homeowner may display within the boundaries of
 5072 the homeowner's parcel one portable, removable United States
 5073 ~~flag or official flag of the State of Florida in a respectful~~
 5074 ~~manner, and one portable, removable official flag,~~ in a
 5075 respectful way and, on Armed Forces Day, Memorial Day, Flag Day,
 5076 Independence Day, and Veterans' Day, may display in a respectful
 5077 way portable, removable official flags ~~manner,~~ not larger than 4
 5078 1/2 feet by 6 feet, that represent ~~which represents~~ the United
 5079 States Army, Navy, Air Force, Marine Corps, or Coast Guard, ~~or a~~
 5080 ~~POW-MIA flag,~~ regardless of any declaration ~~covenants,~~
 5081 ~~restrictions, bylaws, rules,~~ or requirements dealing with flags
 5082 or decorations ~~of the association.~~

5083 Section 33. Section 720.3065, Florida Statutes, is created
 5084 to read:

5085 720.3065 Meetings.--Regular meetings of the board of
 5086 administration shall be held at such time and place as provided
 5087 in the bylaws until the first regular meeting held on or after
 5088 October 1, 2009. Thereafter, the location and time for regular
 5089 board meetings shall be determined by a majority vote of the
 5090 parcel owners at the next regular meeting held on or after
 5091 October 1, 2009. Once the time and place for regular board
 5092 meetings have been selected, neither may be changed unless
 5093 approved by a majority vote of the parcel owners. Regular
 5094 meetings of the board of administration held on weekdays shall
 5095 be held no earlier than 6 p.m. local time.

5096 Section 34. Subsections (1) and (2) of section 720.3085,

5097 Florida Statutes, are amended to read:
 5098 720.3085 Payment for assessments; lien claims.--
 5099 (1) When authorized by the governing documents, the
 5100 association has a lien on each parcel to secure the payment of
 5101 assessments and other amounts provided for by this section.
 5102 Except as otherwise set forth in this section, the lien is
 5103 effective from and shall relate back to the date on which the
 5104 original declaration of the community was recorded. ~~However, as~~
 5105 ~~to first mortgages of record, the lien is effective from and~~
 5106 ~~after recording of a claim of lien in the public records of the~~
 5107 ~~county in which the parcel is located. This subsection does not~~
 5108 ~~bestow upon any lien, mortgage, or certified judgment of record~~
 5109 ~~on July 1, 2008, including the lien for unpaid assessments~~
 5110 ~~created in this section, a priority that, by law, the lien,~~
 5111 ~~mortgage, or judgment did not have before July 1, 2008.~~
 5112 (a) To be valid, a claim of lien must state the
 5113 description of the parcel, the name of the record owner, the
 5114 name and address of the association, the assessment amount due,
 5115 and the due date. The claim of lien shall secure all unpaid
 5116 assessments that are due and that may accrue subsequent to the
 5117 recording of the claim of lien and before entry of a certificate
 5118 of title, as well as interest, late charges, and reasonable
 5119 costs and attorney's fees incurred by the association incident
 5120 to the collection process. The person making the payment is
 5121 entitled to a satisfaction of the lien upon payment in full.
 5122 (b) By recording a notice in substantially the following
 5123 form, a parcel owner or the parcel owner's agent or attorney may
 5124 require the association to enforce a recorded claim of lien

CS/HB 1397

2009

5125 against his or her parcel:

5126

5127 NOTICE OF CONTEST OF LIEN

5128

5129 TO: (Name and address of association)

5130

5131 You are notified that the undersigned contests the claim of lien
 5132 filed by you on _____, (year) , and recorded in Official
 5133 Records Book _____ at page _____, of the public records of _____
 5134 County, Florida, and that the time within which you may file
 5135 suit to enforce your lien is limited to 90 days following the
 5136 date of service of this notice. Executed this _____ day of
 5137 _____, (year) .

5138

5139 Signed: (Owner or Attorney)

5140

5141 After the notice of a contest of lien has been recorded, the
 5142 clerk of the circuit court shall mail a copy of the recorded
 5143 notice to the association by certified mail, return receipt
 5144 requested, at the address shown in the claim of lien or the most
 5145 recent amendment to it and shall certify to the service on the
 5146 face of the notice. Service is complete upon mailing. After
 5147 service, the association has 90 days in which to file an action
 5148 to enforce the lien and, if the action is not filed within the
 5149 90-day period, the lien is void. However, the 90-day period
 5150 shall be extended for any length of time that the association is
 5151 prevented from filing its action because of an automatic stay
 5152 resulting from the filing of a bankruptcy petition by the parcel

5153 | owner or by any other person claiming an interest in the parcel.

5154 | (c) The association may bring an action in its name to
 5155 | foreclose a lien for assessments in the same manner in which a
 5156 | mortgage of real property is foreclosed and may also bring an
 5157 | action to recover a money judgment for the unpaid assessments
 5158 | without waiving any claim of lien. The association is entitled
 5159 | to recover its reasonable attorney's fees incurred in an action
 5160 | to foreclose a lien or an action to recover a money judgment for
 5161 | unpaid assessments.

5162 | (d) If the parcel owner remains in possession of the
 5163 | parcel after a foreclosure judgment has been entered, the court
 5164 | may require the parcel owner to pay a reasonable rent for the
 5165 | parcel. If the parcel is rented or leased during the pendency of
 5166 | the foreclosure action, the association is entitled to the
 5167 | appointment of a receiver to collect the rent. The expenses of
 5168 | the receiver must be paid by the party who does not prevail in
 5169 | the foreclosure action.

5170 | (e) The association may purchase the parcel at the
 5171 | foreclosure sale and hold, lease, mortgage, or convey the
 5172 | parcel.

5173 | (2) (a) A parcel owner, regardless of how his or her title
 5174 | to property has been acquired, including by purchase at a
 5175 | foreclosure sale or by deed in lieu of foreclosure, is liable
 5176 | for all assessments that come due while he or she is the parcel
 5177 | owner. The parcel owner's liability for assessments may not be
 5178 | avoided by waiver or suspension of the use or enjoyment of any
 5179 | common area or by abandonment of the parcel upon which the
 5180 | assessments are made.

5181 (b) A parcel owner is jointly and severally liable with
 5182 the previous parcel owner for all unpaid assessments that came
 5183 due up to the time of transfer of title. This liability is
 5184 without prejudice to any right the present parcel owner may have
 5185 to recover any amounts paid by the present owner from the
 5186 previous owner.

5187 (c) Notwithstanding anything to the contrary contained in
 5188 this section, the liability of a first mortgagee, or its
 5189 successor or assignee as a subsequent holder of the first
 5190 mortgage who acquires title to a parcel by foreclosure or by
 5191 deed in lieu of foreclosure for the unpaid assessments that
 5192 became due before the mortgagee's acquisition of title, shall be
 5193 the lesser of:

5194 1. The parcel's unpaid common expenses and regular
 5195 periodic or special assessments that accrued or came due during
 5196 the 24 ~~12~~ months immediately preceding the acquisition of title
 5197 and for which payment in full has not been received by the
 5198 association; or

5199 2. One-half of the parcel owner's unpaid common expenses
 5200 and regular periodic assessments which accrued or came due from
 5201 the filing of the foreclosure action through the sale of the
 5202 unit, provided that the mortgagee timely paid in full the
 5203 payment required by paragraph (d) and, at the same time,
 5204 remitted to the association advanced common expenses and regular
 5205 periodic assessments equal to one-half of the total unpaid
 5206 common expenses and regular periodic assessments that came due
 5207 in that time period. Any such advance shall be taxed as a cost
 5208 in the foreclosure action, and the mortgagor shall be personally

5209 liable to the mortgagee for the value of the payment made to the
 5210 association plus interest at the interest rate provided for in
 5211 the promissory note for advances. ~~One percent of the original~~
 5212 mortgage debt.

5213
 5214 ~~The limitations on first mortgagee liability provided by this~~
 5215 ~~paragraph apply only if the first mortgagee filed suit against~~
 5216 ~~the parcel owner and initially joined the association as a~~
 5217 ~~defendant in the mortgagee foreclosure action. Joinder of the~~
 5218 ~~association is not required if, on the date the complaint is~~
 5219 ~~filed, the association was dissolved or did not maintain an~~
 5220 ~~office or agent for service of process at a location that was~~
 5221 ~~known to or reasonably discoverable by the mortgagee.~~

5222 (d) A mortgagee who files a foreclosure case on a mortgage
 5223 secured by a parcel in a homeowners' association shall pay to
 5224 the association within 15 days after the filing of the action
 5225 all of the parcel's then unpaid common expenses and regular
 5226 periodic assessments which accrued or came due up to the date of
 5227 the filing of the foreclosure action. The payment shall be taxed
 5228 as a cost in the foreclosure action, and the mortgagor shall be
 5229 personally liable to the mortgagee for the value of the payment
 5230 made to the association plus interest at the interest rate
 5231 provided for in the promissory note for advances. The court
 5232 shall dismiss a foreclosure action on the association's motion
 5233 to dismiss for failure to make such payment and shall award the
 5234 association the costs and reasonable attorney's fees related to
 5235 the motion.

5236 Section 35. Section 720.314, Florida Statutes, is created

5237 to read:
 5238 720.314 Parcel owner informational complaint.--
 5239 (1) Any parcel owner may file an informational complaint
 5240 to report alleged failures by the homeowners' association or
 5241 officers or directors of the association to comply with the
 5242 provisions of this chapter. The informational complaint shall be
 5243 in writing and signed by the complainant, and the accuracy of
 5244 the facts alleged shall be sworn to before a notary public.
 5245 Properly filed informational complaints shall be used for
 5246 analysis and recommendations to the Legislature for changes to
 5247 this chapter.

5248 (2) The informational complaint shall be in the format
 5249 provided in subsection (3) and shall be filed with the Office of
 5250 Program Policy Analysis and Government Accountability. If the
 5251 form does not comply with the requirements provided in
 5252 subsection (3), it shall be returned to the complainant as not
 5253 in compliance with the requirements of this section and shall
 5254 not be considered by the Office of Program Policy Analysis and
 5255 Government Accountability for any purpose.

5256 (3) The informational complaint shall be in substantially
 5257 the following form:

5258
 5259 PARCEL OWNER COMPLAINT

5260
 5261 NAME OF COMPLAINANT:

5262 ADDRESS OF COMPLAINANT:

5263 NAME OF ASSOCIATION:

5264 ADDRESS OF ASSOCIATION:

CS/HB 1397

2009

5265 STATUTE NOT COMPLIED WITH:

5266 NAME OF OFFICER:

5267 NAME OF DIRECTOR:

5268 FACTS SUPPORTING VIOLATION (50 words or less):

5269 _____

5270 Signature of Complainant

5271

5272 SWORN TO AND SUBSCRIBED TO THIS _____ DAY OF _____, 20

5273 _____

5274 Notary Public

5275 Section 36. Subsection (3) of section 721.16, Florida
5276 Statutes, is amended to read:

5277 721.16 Liens for overdue assessments; liens for labor
5278 performed on, or materials furnished to, a timeshare unit.--

5279 (3) The lien is effective from the date of recording a
5280 claim of lien in the public records of the county or counties in
5281 which the accommodations and facilities constituting the
5282 timeshare plan are located. The claim of lien shall state the
5283 name of the timeshare plan and identify the timeshare interest
5284 for which the lien is effective, state the name of the
5285 purchaser, state the assessment amount due, and state the due
5286 dates. Notwithstanding any provision of s. 718.116(5)(a) or s.
5287 719.108 (5) ~~(4)~~ to the contrary, the lien is effective until
5288 satisfied or until 5 years have expired after the date the claim
5289 of lien is recorded unless, within that time, an action to
5290 enforce the lien is commenced pursuant to subsection (2). A
5291 claim of lien for assessments may include only assessments which
5292 are due when the claim is recorded. A claim of lien shall be

CS/HB 1397

2009

5293 signed and acknowledged by an officer or agent of the managing
5294 entity. Upon full payment, the person making the payment is
5295 entitled to receive a satisfaction of the lien.

5296 Section 37. The Office of Program Policy Analysis and
5297 Government Accountability shall conduct a study to evaluate
5298 whether the state should regulate homeowners' associations in a
5299 manner similar to the regulation of condominiums and
5300 cooperatives. The study's scope shall include, but need not be
5301 limited to, estimating the number of homeowners' associations
5302 and the number of homes that are members of a homeowners'
5303 association. The office shall submit its report to the President
5304 of the Senate and the Speaker of the House of Representatives by
5305 January 1, 2010.

5306 Section 38. The sums of \$21,619 in nonrecurring funds and
5307 \$300,963 in recurring funds are appropriated from the Division
5308 of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund
5309 to the Division of Florida Condominiums, Timeshares, and Mobile
5310 Homes for five full-time equivalent positions to carry out the
5311 purposes of section 1 of this act.

5312 Section 39. This act shall take effect July 1, 2009.