

HB 831

2009

1 A bill to be entitled
2 An act relating to community associations; repealing
3 s. 553.509(2), F.S., relating to public elevators and
4 emergency operation plans in certain condominiums and
5 multifamily dwellings; creating s. 627.714, F.S.;
6 requiring that condominium unit owners' policies
7 issued on or after a specified date include a
8 specified minimum amount of loss-assessment coverage;
9 providing requirements for such coverage; amending s.
10 718.111, F.S.; providing guidelines for property
11 insurance coverage obtained by specified types of
12 associations; authorizing an association to obtain
13 certain other types of coverage; providing
14 requirements regarding notice of board meetings
15 conducted for the purpose of establishing the amounts
16 of certain deductibles; providing that insurance for
17 property excluded from the list of items required to
18 be covered under a property policy is the
19 responsibility of a unit owner; requiring that certain
20 policies issued on or after a specified date conform
21 to specified requirements of state law; requiring that
22 certain policies include loss-assessment coverage;
23 specifying a minimum amount for such coverage;
24 deleting provisions relating to the responsibility to
25 provide property insurance for certain improvements or
26 additions; requiring that an association require unit
27 owners to provide evidence of a currently effective
28 personal liability policy; limiting the number of

HB 831

2009

29 | times an association may enforce such requirement;
30 | specifying a minimum amount for such coverage;
31 | requiring that such coverage contain certain
32 | provisions; deleting a provision requiring that an
33 | association be an additional named insured and loss
34 | payee on all casualty policies issued to unit owners
35 | in a condominium operated by an association; providing
36 | conditions under which a unit owner is responsible for
37 | costs of replacement or repair of portions of
38 | condominium property not paid by insurance proceeds;
39 | providing penalties for any person who knowingly or
40 | intentionally defaces or destroys certain records of
41 | an association with the intent to harm the association
42 | or any of its members; providing that an association
43 | is not responsible for the use or misuse of certain
44 | information obtained pursuant to state law requiring
45 | the maintenance of certain records of an association;
46 | providing that, notwithstanding certain requirements,
47 | certain records are not accessible to unit owners;
48 | requiring that any rules adopted for the purpose of
49 | setting forth uniform accounting principles and
50 | standards or addressing financial reporting
51 | requirements include certain provisions and standards;
52 | amending s. 718.112, F.S.; providing that the board of
53 | administration of an association has no obligation to
54 | take action with regard to certain items on its
55 | agenda; providing for the expiration of the terms of
56 | members of the board of administration if no

57 | provisions in that regard exist in the bylaws;
58 | authorizing the reappointment of members under certain
59 | conditions; prohibiting coowners or cooccupants from
60 | simultaneously serving as members of the board of
61 | certain associations; providing an exception; deleting
62 | a provision requiring an association to mail a
63 | certification containing certain provisions to unit
64 | owners before an election of board members; requiring
65 | that any unit owner desiring to be a candidate for
66 | election as a member of the board give written notice;
67 | requiring that such notice contain certain
68 | attestations; requiring that such notice be signed and
69 | acknowledged by the candidate on or before a specified
70 | deadline; requiring that certain expenses be detailed
71 | in an association's annual budget; providing that a
72 | director or officer delinquent in the payment of
73 | regular or special assessments by more than a
74 | specified number of days is deemed to have abandoned
75 | the office; requiring that a director charged by
76 | information or indictment of certain offenses
77 | involving an association's funds or property be
78 | removed from office; amending s. 718.115, F.S.;
79 | requiring that broadband or Internet service obtained
80 | pursuant to a bulk contract as provided in the
81 | declaration be deemed a common expense; conforming a
82 | cross-reference; amending s. 718.116, F.S.; limiting
83 | the liability for certain unpaid assessments of
84 | certain entities acquiring title to a unit by

85 | foreclosure or deed in lieu of foreclosure; providing
 86 | that the failure of such an entity to pay such unpaid
 87 | assessments within a specified period after acquiring
 88 | title entitles the association to recover all
 89 | outstanding special and regular assessments that were
 90 | due before the acquisition of title; expanding the
 91 | definition of the term "successor or assignee" to
 92 | include certain affiliates and subsidiaries;
 93 | prohibiting an association from filing a lien against
 94 | a condominium unit for a specified period after notice
 95 | of intent to file such lien is delivered to the owner;
 96 | providing means for completion of such delivery;
 97 | correcting a cross-reference; repealing s. 718.121(4),
 98 | F.S., relating to the filing of liens by an
 99 | association against a condominium unit; amending s.
 100 | 720.304, F.S.; providing that a flagpole and any
 101 | flagpole display are subject to certain codes and
 102 | regulations; amending s. 721.16, F.S., relating to
 103 | liens for overdue assessments; conforming a cross-
 104 | reference; providing an effective date.

106 | Be It Enacted by the Legislature of the State of Florida:

108 | Section 1. Subsection (2) of section 553.509, Florida
 109 | Statutes, is repealed.

110 | Section 2. Section 627.714, Florida Statutes, is created
 111 | to read:

112 | 627.714 Condominium unit owner's coverage; loss-assessment

113 coverage required.--For policies issued or renewed on or after
 114 October 1, 2009, coverage under a condominium unit owner's
 115 policy shall include loss-assessment coverage of at least
 116 \$2,000. Such loss-assessment coverage shall cover the unit
 117 owner's share of the master policy deductible and the unit
 118 owner's share of an assessment against all condominium unit
 119 owners by the association, up to the limit of liability in
 120 effect at the time of the loss that results in the assessment.
 121 At a minimum, the loss-assessment coverage must cover
 122 assessments for a loss to property for a peril insured by the
 123 association.

124 Section 3. Paragraphs (a), (b), (c), (d), (e), (f), (g),
 125 and (j) of subsection (11), paragraphs (a), (b), and (c) of
 126 subsection (12), and subsection (13) of section 718.111, Florida
 127 Statutes, are amended to read:

128 718.111 The association.--

129 (11) INSURANCE.--In order to protect the safety, health,
 130 and welfare of the people of the State of Florida and to ensure
 131 consistency in the provision of insurance coverage to
 132 condominiums and their unit owners, this subsection applies to
 133 every residential condominium in the state, regardless of the
 134 date of its declaration of condominium. It is the intent of the
 135 Legislature to encourage lower or stable insurance premiums for
 136 associations described in this subsection.

137 (a) Adequate property hazard insurance, regardless of any
 138 requirement in the declaration of condominium for coverage by
 139 the association for full insurable value, replacement cost, or
 140 similar coverage, shall be based upon the replacement cost of

141 the property to be insured as determined by an independent
 142 insurance appraisal or update of a prior appraisal. The full
 143 insurable value shall be determined at least once every 36
 144 months. The association may also obtain other coverage as
 145 appropriate, including, but not limited to, liability insurance
 146 for directors and officers, insurance for the benefit of
 147 association employees, and flood insurance for common elements,
 148 association property, and units.

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

152 2. The association may also provide adequate property
 153 ~~hazard~~ insurance coverage for a group of no fewer than three
 154 communities created and operating under this chapter, chapter
 155 719, chapter 720, or chapter 721 by obtaining and maintaining
 156 for such communities insurance coverage sufficient to cover an
 157 amount equal to the probable maximum loss for the communities
 158 for a 250-year windstorm event. Such probable maximum loss must
 159 be determined through the use of a competent model that has been
 160 accepted by the Florida Commission on Hurricane Loss Projection
 161 Methodology. No policy or program providing such coverage shall
 162 be issued or renewed after July 1, 2008, unless it has been
 163 reviewed and approved by the Office of Insurance Regulation. The
 164 review and approval shall include approval of the policy and
 165 related forms pursuant to ss. 627.410 and 627.411, approval of
 166 the rates pursuant to s. 627.062, a determination that the loss
 167 model approved by the commission was accurately and
 168 appropriately applied to the insured structures to determine the

169 250-year probable maximum loss, and a determination that
 170 complete and accurate disclosure of all material provisions is
 171 provided to condominium unit owners prior to execution of the
 172 agreement by a condominium association.

173 3. When determining the adequate amount of property hazard ~~hazard~~
 174 insurance coverage, the association may consider deductibles as
 175 determined by this subsection.

176 (b) If an association is a developer-controlled
 177 association, the association shall exercise its best efforts to
 178 obtain and maintain insurance as described in paragraph (a).
 179 Failure to obtain and maintain adequate property hazard ~~hazard~~
 180 insurance during any period of developer control constitutes a
 181 breach of fiduciary responsibility by the developer-appointed
 182 members of the board of directors of the association, unless the
 183 members can show that, despite such failure, they have made
 184 their best efforts to maintain the required coverage.

185 (c) Policies may include deductibles as determined by the
 186 board.

187 1. The deductibles shall be consistent with industry
 188 standards and prevailing practice for communities of similar
 189 size and age, and having similar construction and facilities in
 190 the locale where the condominium property is situated.

191 2. The deductibles may be based upon prevailing industry
 192 deductibles, available funds, including reserve accounts, or
 193 predetermined assessment authority at the time the insurance is
 194 obtained.

195 3. The board shall establish the amount of deductibles
 196 based upon the level of available funds and predetermined

HB 831

2009

197 assessment authority at a meeting of the board. Such meeting
 198 shall be open to all unit owners in the manner set forth in s.
 199 718.112(2)(e). The notice of such meeting must state the
 200 current, prevailing, or proposed deductible and the available
 201 funds and the assessment authority relied upon by the board and
 202 estimate any potential assessment amount against each unit, if
 203 any. The meeting described in this paragraph may be held in
 204 conjunction with a meeting to consider the proposed budget or an
 205 amendment thereto.

206 (d) An association controlled by unit owners operating as
 207 a residential condominium shall use its best efforts to obtain
 208 and maintain adequate insurance to protect the association, the
 209 association property, the common elements, and the condominium
 210 property that is required to be insured by the association
 211 pursuant to this subsection. Such insurance shall include
 212 property insurance, which must insure, at a minimum, loss due to
 213 the perils of fire, lightning, windstorm, and hail.

214 (e) The declaration of condominium, as originally
 215 ~~recorded,~~ or as amended pursuant to procedures provided therein,
 216 may provide that condominium property consisting of freestanding
 217 buildings comprised of no more than one building in or on such
 218 unit need not be insured by the association if the declaration
 219 requires the unit owner to obtain adequate insurance for the
 220 condominium property. ~~An association may also obtain and~~
 221 ~~maintain liability insurance for directors and officers,~~
 222 ~~insurance for the benefit of association employees, and flood~~
 223 ~~insurance for common elements, association property, and units.~~

224 (f) Every property hazard insurance policy issued or

225 renewed on or after January 1, 2009, for the purpose of
 226 protecting the condominium shall provide primary coverage for:

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

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

232 3. The coverage shall exclude all personal property within
 233 the unit or limited common elements, and floor, wall, and
 234 ceiling coverings, electrical fixtures, appliances, water
 235 heaters, water filters, built-in cabinets and countertops, and
 236 window treatments, including curtains, drapes, blinds, hardware,
 237 and similar window treatment components, or replacements of any
 238 of the foregoing. Such property and any insurance thereupon is
 239 the responsibility of the unit owner.

240 (g) A condominium unit owner's policy issued after October
 241 1, 2009, shall conform to the requirements of s. 627.714. Every
 242 hazard insurance policy issued or renewed on or after January 1,
 243 2009, to an individual unit owner must contain a provision
 244 stating that the coverage afforded by such policy is excess
 245 coverage over the amount recoverable under any other policy
 246 covering the same property. Such policies must include loss-
 247 assessment ~~special-assessment~~ coverage of no less than \$2,000
 248 per occurrence without a deductible. An insurance policy issued
 249 to an individual unit owner providing such coverage does not
 250 provide rights of subrogation against the condominium
 251 association operating the condominium in which such individual's
 252 unit is located.

253 ~~1. All improvements or additions to the condominium~~
254 ~~property that benefit fewer than all unit owners shall be~~
255 ~~insured by the unit owner or owners having the use thereof, or~~
256 ~~may be insured by the association at the cost and expense of the~~
257 ~~unit owners having the use thereof.~~

258 1.2. The association shall require each owner to provide
259 evidence of a currently effective policy of personal hazard and
260 liability insurance upon request, but not more than once per
261 year. Such insurance must provide limits of no less than
262 \$300,000 per occurrence and shall insure the unit owner for
263 losses to others resulting from conditions and occurrences
264 within the unit or the limited common elements without regard to
265 fault. Upon the failure of an owner to provide a certificate of
266 insurance issued by an insurer approved to write such insurance
267 in this state within 30 days after the date on which a written
268 request is delivered, the association may purchase a policy of
269 insurance on behalf of an owner. The cost of such a policy,
270 together with reconstruction costs undertaken by the association
271 but which are the responsibility of the unit owner, may be
272 collected in the manner provided for the collection of
273 assessments in s. 718.116.

274 ~~2.3.~~ All reconstruction work after a casualty loss shall
275 be undertaken by the association except as otherwise authorized
276 in this section. A unit owner may undertake reconstruction work
277 on portions of the unit with the prior written consent of the
278 board of administration. However, such work may be conditioned
279 upon the approval of the repair methods, the qualifications of
280 the proposed contractor, or the contract that is used for that

HB 831

2009

281 purpose. A unit owner shall obtain all required governmental
282 permits and approvals prior to commencing reconstruction.

283 ~~3.4.~~ Unit owners are responsible for the cost of
284 reconstruction of any portions of the condominium property for
285 which the unit owner is required to carry casualty insurance,
286 and any such reconstruction work undertaken by the association
287 shall be chargeable to the unit owner and enforceable as an
288 assessment pursuant to s. 718.116. ~~The association must be an~~
289 ~~additional named insured and loss payee on all casualty~~
290 ~~insurance policies issued to unit owners in the condominium~~
291 ~~operated by the association.~~

292 ~~4.5.~~ A multicondominium association may elect, by a
293 majority vote of the collective members of the condominiums
294 operated by the association, to operate such condominiums as a
295 single condominium for purposes of insurance matters, including,
296 but not limited to, the purchase of the property hazard ~~hazard~~
297 insurance required by this section and the apportionment of
298 deductibles and damages in excess of coverage. The election to
299 aggregate the treatment of insurance premiums, deductibles, and
300 excess damages constitutes an amendment to the declaration of
301 all condominiums operated by the association, and the costs of
302 insurance shall be stated in the association budget. The
303 amendments shall be recorded as required by s. 718.110.

304 (j) Any portion of the condominium property required to be
305 insured by the association against casualty loss pursuant to
306 paragraph (f) which is damaged by casualty shall be
307 reconstructed, repaired, or replaced as necessary by the
308 association as a common expense. All property hazard ~~hazard~~ insurance

309 deductibles, uninsured losses, and other damages in excess of
 310 property hazard insurance coverage under the property hazard
 311 insurance policies maintained by the association are a common
 312 expense of the condominium, except that:

313 1. A unit owner is responsible for the costs of repair or
 314 replacement of any portion of the condominium property not paid
 315 by insurance proceeds, if such damage is caused by conditions
 316 and occurrences within the unit or the limited common elements
 317 without regard to fault, by intentional conduct, negligence, or
 318 failure to comply with the terms of the declaration or the rules
 319 of the association, or by a unit owner, the members of a unit
 320 owner's his or her family, unit occupants, tenants, guests, or
 321 invitees, without compromise of the subrogation rights of any
 322 insurer as set forth in paragraph (g).

323 2. The provisions of subparagraph 1. regarding the
 324 financial responsibility of a unit owner for the costs of
 325 repairing or replacing other portions of the condominium
 326 property also apply to the costs of repair or replacement of
 327 personal property of other unit owners or the association, as
 328 well as other property, whether real or personal, which the unit
 329 owners are required to insure under paragraph (g).

330 3. To the extent the cost of repair or reconstruction for
 331 which the unit owner is responsible under this paragraph is
 332 reimbursed to the association by insurance proceeds, and, to the
 333 extent the association has collected the cost of such repair or
 334 reconstruction from the unit owner, the association shall
 335 reimburse the unit owner without the waiver of any rights of
 336 subrogation.

337 4. The association is not obligated to pay for repair or
 338 reconstruction or repairs of casualty losses as a common expense
 339 if the casualty losses were known or should have been known to a
 340 unit owner and were not reported to the association until after
 341 the insurance claim of the association for that casualty was
 342 settled or resolved with finality, or denied on the basis that
 343 it was untimely filed.

344 (12) OFFICIAL RECORDS.--

345 (a) From the inception of the association, the association
 346 shall maintain each of the following items, when applicable,
 347 which shall constitute the official records of the association:

348 1. A copy of the plans, permits, warranties, and other
 349 items provided by the developer pursuant to s. 718.301(4).

350 2. A photocopy of the recorded declaration of condominium
 351 of each condominium operated by the association and of each
 352 amendment to each declaration.

353 3. A photocopy of the recorded bylaws of the association
 354 and of each amendment to the bylaws.

355 4. A certified copy of the articles of incorporation of
 356 the association, or other documents creating the association,
 357 and of each amendment thereto.

358 5. A copy of the current rules of the association.

359 6. A book or books which contain the minutes of all
 360 meetings of the association, of the board of administration, and
 361 of unit owners, which minutes shall be retained for a period of
 362 not less than 7 years.

363 7. A current roster of all unit owners and their mailing
 364 addresses, unit identifications, voting certifications, and, if

HB 831

2009

365 known, telephone numbers. The association shall also maintain
366 the electronic mailing addresses and the numbers designated by
367 unit owners for receiving notice sent by electronic transmission
368 of those unit owners consenting to receive notice by electronic
369 transmission. The electronic mailing addresses and numbers
370 provided by unit owners to receive notice by electronic
371 transmission shall be removed from association records when
372 consent to receive notice by electronic transmission is revoked.
373 However, the association is not liable for an erroneous
374 disclosure of the electronic mail address or the number for
375 receiving electronic transmission of notices.

376 8. All current insurance policies of the association and
377 condominiums operated by the association.

378 9. A current copy of any management agreement, lease, or
379 other contract to which the association is a party or under
380 which the association or the unit owners have an obligation or
381 responsibility.

382 10. Bills of sale or transfer for all property owned by
383 the association.

384 11. Accounting records for the association and separate
385 accounting records for each condominium which the association
386 operates. All accounting records shall be maintained for a
387 period of not less than 7 years. Any person who knowingly or
388 intentionally defaces or destroys accounting records required to
389 be created and maintained by this chapter, during the period for
390 which such records are required to be maintained pursuant to
391 this chapter, or who knowingly or intentionally fails to create
392 or maintain accounting records required to be maintained by this

393 chapter, with the intent of causing harm to the association or
394 one or more of its members, is personally subject to a civil
395 penalty pursuant to s. 718.501(1)(d). The accounting records
396 shall include, but are not limited to:

397 a. Accurate, itemized, and detailed records of all
398 receipts and expenditures.

399 b. A current account and a monthly, bimonthly, or
400 quarterly statement of the account for each unit designating the
401 name of the unit owner, the due date and amount of each
402 assessment, the amount paid upon the account, and the balance
403 due.

404 c. All audits, reviews, accounting statements, and
405 financial reports of the association or condominium.

406 d. All contracts for work to be performed. Bids for work
407 to be performed shall also be considered official records and
408 shall be maintained by the association.

409 12. Ballots, sign-in sheets, voting proxies, and all other
410 papers relating to voting by unit owners, which shall be
411 maintained for a period of 1 year from the date of the election,
412 vote, or meeting to which the document relates, notwithstanding
413 paragraph (b).

414 13. All rental records, when the association is acting as
415 agent for the rental of condominium units.

416 14. A copy of the current question and answer sheet as
417 described by s. 718.504.

418 15. All other records of the association not specifically
419 included in the foregoing which are related to the operation of
420 the association.

HB 831

2009

421 16. A copy of the inspection report as provided for in s.
422 718.301(4) (p).

423 (b) The official records of the association shall be
424 maintained within the state for at least 7 years. The records of
425 the association shall be made available to a unit owner within
426 45 miles of the condominium property or within the county in
427 which the condominium property is located within 5 working days
428 after receipt of written request by the board or its designee.
429 However, such distance requirement does not apply to an
430 association governing a timeshare condominium. This paragraph
431 may be complied with by having a copy of the official records of
432 the association available for inspection or copying on the
433 condominium property or association property, or the association
434 may offer the option of making the records of the association
435 available to a unit owner either electronically via the Internet
436 or by allowing the records to be viewed in electronic format on
437 a computer screen and printed upon request. The association is
438 not responsible for the use or misuse of the information
439 provided pursuant to the compliance requirements of this
440 chapter.

441 (c) The official records of the association are open to
442 inspection by any association member or the authorized
443 representative of such member at all reasonable times. The right
444 to inspect the records includes the right to make or obtain
445 copies, at the reasonable expense, if any, of the association
446 member. The association may adopt reasonable rules regarding the
447 frequency, time, location, notice, and manner of record
448 inspections and copying. The failure of an association to

HB 831

2009

449 provide the records within 10 working days after receipt of a
450 written request shall create a rebuttable presumption that the
451 association willfully failed to comply with this paragraph. A
452 unit owner who is denied access to official records is entitled
453 to the actual damages or minimum damages for the association's
454 willful failure to comply with this paragraph. The minimum
455 damages shall be \$50 per calendar day up to 10 days, the
456 calculation to begin on the 11th working day after receipt of
457 the written request. The failure to permit inspection of the
458 association records as provided herein entitles any person
459 prevailing in an enforcement action to recover reasonable
460 attorney's fees from the person in control of the records who,
461 directly or indirectly, knowingly denied access to the records
462 for inspection. Any person who knowingly or intentionally
463 defaces or destroys accounting records that are required by this
464 chapter to be created and maintained, during the period for
465 which such records are required to be maintained pursuant to
466 this chapter, or who knowingly or intentionally fails to create
467 or maintain accounting records that are required to be
468 maintained by this chapter, with the intent of causing harm to
469 the association or one or more of its members, is personally
470 subject to a civil penalty pursuant to s. 718.501(1)(d). The
471 association shall maintain an adequate number of copies of the
472 declaration, articles of incorporation, bylaws, and rules, and
473 all amendments to each of the foregoing, as well as the question
474 and answer sheet provided for in s. 718.504 and year-end
475 financial information required in this section, on the
476 condominium property to ensure their availability to unit owners

HB 831

2009

477 and prospective purchasers, and may charge its actual costs for
478 preparing and furnishing these documents to those requesting the
479 documents same. Notwithstanding the provisions of this
480 paragraph, the following records shall not be accessible to unit
481 owners:

482 1. Any record protected by the lawyer-client privilege as
483 described in s. 90.502; and any record protected by the work-
484 product privilege, including any record prepared by an
485 association attorney or prepared at the attorney's express
486 direction; which reflects a mental impression, conclusion,
487 litigation strategy, or legal theory of the attorney or the
488 association, and which was prepared exclusively for civil or
489 criminal litigation or for adversarial administrative
490 proceedings, or which was prepared in anticipation of imminent
491 civil or criminal litigation or imminent adversarial
492 administrative proceedings until the conclusion of the
493 litigation or adversarial administrative proceedings.

494 2. Information obtained by an association in connection
495 with the approval of the lease, sale, or other transfer of a
496 unit.

497 3. Disciplinary, health, insurance, and personnel records
498 of the association's employees.

499 4.3. Medical records of unit owners.

500 5.4. Social security numbers, driver's license numbers,
501 credit card numbers, and other personal identifying information
502 of any person, excluding the person's name, lot or unit
503 designation, mailing address, property address, and other
504 contact information.

HB 831

2009

505 6. Any electronic security measure that is used by the
506 association to safeguard data, including passwords.

507
508 The functionality included within software used by the
509 association which allows manipulation of data is not a part of
510 the official records of the association, even if the owner owns
511 a copy of the same software used by the association.

512 (13) FINANCIAL REPORTING.--Within 90 days after the end of
513 the fiscal year, or annually on a date provided in the bylaws,
514 the association shall prepare and complete, or contract for the
515 preparation and completion of, a financial report for the
516 preceding fiscal year. Within 21 days after the final financial
517 report is completed by the association or received from the
518 third party, but not later than 120 days after the end of the
519 fiscal year or other date as provided in the bylaws, the
520 association shall mail to each unit owner at the address last
521 furnished to the association by the unit owner, or hand deliver
522 to each unit owner, a copy of the financial report or a notice
523 that a copy of the financial report will be mailed or hand
524 delivered to the unit owner, without charge, upon receipt of a
525 written request from the unit owner. The division shall adopt
526 rules setting forth uniform accounting principles and standards
527 to be used by all associations and shall adopt rules addressing
528 financial reporting requirements for multicondominium
529 associations. The rules shall include, but not be limited to,
530 standards for presenting a summary of association reserves,
531 including, but not limited to, a good faith estimate disclosing
532 the annual amount of reserve funds that would be necessary for

HB 831

2009

533 the association to fully fund reserves for each reserve item
534 based upon on the straight-line method. This disclosure is not
535 applicable to reserves funded via the pooling method ~~uniform~~
536 ~~accounting principles and standards for stating the disclosure~~
537 ~~of at least a summary of the reserves, including information as~~
538 ~~to whether such reserves are being funded at a level sufficient~~
539 ~~to prevent the need for a special assessment and, if not, the~~
540 ~~amount of assessments necessary to bring the reserves up to the~~
541 ~~level necessary to avoid a special assessment. The person~~
542 ~~preparing the financial reports shall be entitled to rely on an~~
543 ~~inspection report prepared for or provided to the association to~~
544 ~~meet the fiscal and fiduciary standards of this chapter. In~~
545 adopting such rules, the division shall consider the number of
546 members and annual revenues of an association. Financial reports
547 shall be prepared as follows:

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

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

556 2. An association with total annual revenues of at least
557 \$200,000, but less than \$400,000, shall prepare reviewed
558 financial statements.

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

HB 831

2009

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

564 2. An association that ~~which~~ operates fewer ~~less~~ than 50
565 units, regardless of the association's annual revenues, shall
566 prepare a report of cash receipts and expenditures in lieu of
567 financial statements required by paragraph (a).

568 3. A report of cash receipts and disbursements must
569 disclose the amount of receipts by accounts and receipt
570 classifications and the amount of expenses by accounts and
571 expense classifications, including, but not limited to, the
572 following, as applicable: costs for security, professional and
573 management fees and expenses, taxes, costs for recreation
574 facilities, expenses for refuse collection and utility services,
575 expenses for lawn care, costs for building maintenance and
576 repair, insurance costs, administration and salary expenses, and
577 reserves accumulated and expended for capital expenditures,
578 deferred maintenance, and any other category for which the
579 association maintains reserves.

580 (c) An association may prepare or cause to be prepared,
581 without a meeting of or approval by the unit owners:

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

585 2. Reviewed or audited financial statements, if the
586 association is required to prepare compiled financial
587 statements; or

588 3. Audited financial statements if the association is

HB 831

2009

589 required to prepare reviewed financial statements.

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

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

595 2. A report of cash receipts and expenditures or a
596 compiled financial statement in lieu of a reviewed or audited
597 financial statement; or

598 3. A report of cash receipts and expenditures, a compiled
599 financial statement, or a reviewed financial statement in lieu
600 of an audited financial statement.

601

602 Such meeting and approval must occur before ~~prior to~~ the end of
603 the fiscal year and is effective ~~only~~ for the fiscal year in
604 which the vote is taken, except that the approval also may be
605 effective for the following fiscal year if agreed upon by the
606 members. With respect to an association to which the developer
607 has not turned over control of the association, all unit owners,
608 including the developer, may vote on issues related to the
609 preparation of financial reports for the first 2 fiscal years of
610 the association's operation, beginning with the fiscal year in
611 which the declaration is recorded. Thereafter, all unit owners
612 except the developer may vote on such issues until control is
613 turned over to the association by the developer. Any audit or
614 review prepared under this section shall be paid for by the
615 developer if done prior to turnover of control of the
616 association. An association may not waive the financial

HB 831

2009

617 reporting requirements of this section for more than 3
618 consecutive years.

619 Section 4. Paragraphs (c), (d), (f), (n), and (o) of
620 subsection (2) of section 718.112, Florida Statutes, are amended
621 to read:

622 718.112 Bylaws.--

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

626 (c) Board of administration meetings.--Meetings of the
627 board of administration at which a quorum of the members is
628 present shall be open to all unit owners. Any unit owner may
629 tape record or videotape meetings of the board of
630 administration. The right to attend such meetings includes the
631 right to speak at such meetings with reference to all designated
632 agenda items. The division shall adopt reasonable rules
633 governing the tape recording and videotaping of the meeting. The
634 association may adopt written reasonable rules governing the
635 frequency, duration, and manner of unit owner statements.
636 Adequate notice of all meetings, which notice shall specifically
637 incorporate an identification of agenda items, shall be posted
638 conspicuously on the condominium property at least 48 continuous
639 hours preceding the meeting except in an emergency. If 20
640 percent of the voting interests petition the board to address an
641 item of business, the board shall at its next regular board
642 meeting or at a special meeting of the board, but not later than
643 60 days after the receipt of the petition, place the item on the
644 agenda. However, the board shall have no obligation to take any

HB 831

2009

645 action on the item. Any item not included on the notice may be
646 taken up on an emergency basis by at least a majority plus one
647 of the members of the board. Such emergency action shall be
648 noticed and ratified at the next regular meeting of the board.
649 However, written notice of any meeting at which nonemergency
650 special assessments, or at which amendment to rules regarding
651 unit use, will be considered shall be mailed, delivered, or
652 electronically transmitted to the unit owners and posted
653 conspicuously on the condominium property not less than 14 days
654 prior to the meeting. Evidence of compliance with this 14-day
655 notice shall be made by an affidavit executed by the person
656 providing the notice and filed among the official records of the
657 association. Upon notice to the unit owners, the board shall by
658 duly adopted rule designate a specific location on the
659 condominium property or association property upon which all
660 notices of board meetings shall be posted. If there is no
661 condominium property or association property upon which notices
662 can be posted, notices of board meetings shall be mailed,
663 delivered, or electronically transmitted at least 14 days before
664 the meeting to the owner of each unit. In lieu of or in addition
665 to the physical posting of notice of any meeting of the board of
666 administration on the condominium property, the association may,
667 by reasonable rule, adopt a procedure for conspicuously posting
668 and repeatedly broadcasting the notice and the agenda on a
669 closed-circuit cable television system serving the condominium
670 association. However, if broadcast notice is used in lieu of a
671 notice posted physically on the condominium property, the notice
672 and agenda must be broadcast at least four times every broadcast

HB 831

2009

673 hour of each day that a posted notice is otherwise required
674 under this section. When broadcast notice is provided, the
675 notice and agenda must be broadcast in a manner and for a
676 sufficient continuous length of time so as to allow an average
677 reader to observe the notice and read and comprehend the entire
678 content of the notice and the agenda. Notice of any meeting in
679 which regular or special assessments against unit owners are to
680 be considered for any reason shall specifically state that
681 assessments will be considered and the nature, estimated cost,
682 and description of the purposes for such assessments. Meetings
683 of a committee to take final action on behalf of the board or
684 make recommendations to the board regarding the association
685 budget are subject to the provisions of this paragraph. Meetings
686 of a committee that does not take final action on behalf of the
687 board or make recommendations to the board regarding the
688 association budget are subject to the provisions of this
689 section, unless those meetings are exempted from this section by
690 the bylaws of the association. Notwithstanding any other law,
691 the requirement that board meetings and committee meetings be
692 open to ~~the~~ unit owners is inapplicable to meetings between the
693 board or a committee and the association's attorney, with
694 respect to proposed or pending litigation, when the meeting is
695 held for the purpose of seeking or rendering legal advice.

696 (d) Unit owner meetings.--

697 1. There shall be an annual meeting of the unit owners
698 held at the location provided in the association bylaws and, if
699 the bylaws are silent as to the location, the meeting shall be
700 held within 45 miles of the condominium property. However, such

HB 831

2009

701 distance requirement does not apply to an association governing
702 a timeshare condominium. Unless the bylaws provide otherwise, a
703 vacancy on the board caused by the expiration of a director's
704 term shall be filled by electing a new board member, and the
705 election shall be by secret ballot; however, if the number of
706 vacancies equals or exceeds the number of candidates, no
707 election is required. The terms of all members of the board
708 shall expire at the annual meeting and such board members may
709 stand for reelection unless otherwise permitted by the bylaws.
710 If ~~In the event that~~ the bylaws permit staggered terms of no
711 more than 2 years and upon approval of a majority of the total
712 voting interests, the association board members may serve 2-year
713 staggered terms. If there is no provision in the bylaws for
714 terms of the members of the board, the terms of all members of
715 the board shall expire upon the election of their successors at
716 the annual meeting or at a special meeting called for that
717 purpose and such board members may stand for reelection unless
718 otherwise provided in the bylaws. If the number of vacancies
719 exceeds the number of candidates, any ~~no person is interested in~~
720 ~~or demonstrates an intention to run for the position of a board~~
721 ~~member whose term~~ would expire upon the election of a successor
722 ~~has expired~~ according to the provisions of this subparagraph may
723 be reappointed to serve by the remaining directors and, ~~such~~
724 ~~board member whose term has expired~~ shall be automatically
725 reappointed to the board of administration and need not stand
726 for reelection if there are no other directors whose term would
727 similarly expire. In a condominium association of more than 10
728 units, coowners or cooccupants of a unit may not serve as

HB 831

2009

729 members of the board of directors at the same time unless one
730 coowner or cooccupant owns more than one unit. Any unit owner
731 desiring to be a candidate for board membership shall comply
732 with subparagraph 3. A person who has been suspended or removed
733 by the division under this chapter, or who is delinquent in the
734 payment of any fee, fine, or special or regular assessment as
735 provided in paragraph (n), is not eligible for board membership.
736 A person who has been convicted of any felony in this state or
737 in a United States District or Territorial Court, or who has
738 been convicted of any offense in another jurisdiction that would
739 be considered a felony if committed in this state, is not
740 eligible for board membership unless such felon's civil rights
741 have been restored for a period of no less than 5 years as of
742 the date on which such person seeks election to the board. The
743 validity of an action by the board is not affected if it is
744 later determined that a member of the board is ineligible for
745 board membership due to having been convicted of a felony.

746 2. The bylaws shall provide the method of calling meetings
747 of unit owners, including annual meetings. Written notice, which
748 ~~notice~~ must include an agenda, shall be mailed, hand delivered,
749 or electronically transmitted to each unit owner at least 14
750 days prior to the annual meeting and shall be posted in a
751 conspicuous place on the condominium property at least 14
752 continuous days preceding the annual meeting. Upon notice to the
753 unit owners, the board shall by duly adopted rule designate a
754 specific location on the condominium property or association
755 property where ~~upon which~~ all notices of unit owner meetings
756 shall be posted; however, if there is no condominium property or

HB 831

2009

757 association property upon which notices can be posted, this
758 requirement does not apply. In lieu of or in addition to the
759 physical posting of notice of any meeting of the unit owners on
760 the condominium property, the association may, by reasonable
761 rule, adopt a procedure for conspicuously posting and repeatedly
762 broadcasting the notice and the agenda on a closed-circuit cable
763 television system serving the condominium association. However,
764 if broadcast notice is used in lieu of a notice posted
765 physically on the condominium property, the notice and agenda
766 must be broadcast at least four times every broadcast hour of
767 each day that a posted notice is otherwise required under this
768 section. When broadcast notice is provided, the notice and
769 agenda must be broadcast in a manner and for a sufficient
770 continuous length of time so as to allow an average reader to
771 observe the notice and read and comprehend the entire content of
772 the notice and the agenda. Unless a unit owner waives in writing
773 the right to receive notice of the annual meeting, such notice
774 shall be hand delivered, mailed, or electronically transmitted
775 to each unit owner. Notice for meetings and notice for all other
776 purposes shall be mailed to each unit owner at the address last
777 furnished to the association by the unit owner, or hand
778 delivered to each unit owner. However, if a unit is owned by
779 more than one person, the association shall provide notice, for
780 meetings and all other purposes, to that one address which the
781 developer initially identifies for that purpose and thereafter
782 as one or more of the owners of the unit shall so advise the
783 association in writing, or if no address is given or the owners
784 of the unit do not agree, to the address provided on the deed of

785 record. An officer of the association, or the manager or other
 786 person providing notice of the association meeting, shall
 787 provide an affidavit or United States Postal Service certificate
 788 of mailing, to be included in the official records of the
 789 association affirming that the notice was mailed or hand
 790 delivered, in accordance with this provision.

791 3. The members of the board shall be elected by written
 792 ballot or voting machine. Proxies shall in no event be used in
 793 electing the board, either in general elections or elections to
 794 fill vacancies caused by recall, resignation, or otherwise,
 795 unless otherwise provided in this chapter. Not less than 60 days
 796 before a scheduled election, the association shall mail,
 797 deliver, or electronically transmit, whether by separate
 798 association mailing or included in another association mailing,
 799 delivery, or transmission, including regularly published
 800 newsletters, to each unit owner entitled to a vote, a first
 801 notice of the date of the election ~~along with a certification~~
 802 ~~form provided by the division attesting that he or she has read~~
 803 ~~and understands, to the best of his or her ability, the~~
 804 ~~governing documents of the association and the provisions of~~
 805 ~~this chapter and any applicable rules.~~ Any unit owner or other
 806 eligible person desiring to be a candidate for the board must
 807 provide a give written notice of intent to be a candidate to the
 808 association, which must contain a certification, in the form
 809 designated by the division, attesting that he or she has read
 810 and understands, to the best of his or her ability, the
 811 governing documents of the association and the provisions of
 812 this chapter and any applicable rules. The notice must be

HB 831

2009

813 acknowledged and signed by the candidate not less than 40 days
814 before a scheduled election. Together with the written notice
815 and agenda as set forth in subparagraph 2., the association
816 shall mail, deliver, or electronically transmit a second notice
817 of the election to all unit owners entitled to vote therein,
818 together with a ballot which shall list all candidates. Upon
819 request of a candidate, the association shall include an
820 information sheet, no larger than 8 1/2 inches by 11 inches,
821 which must be furnished by the candidate not less than 35 days
822 before the election and, ~~along with the signed certification~~
823 ~~form provided for in this subparagraph, to be included with the~~
824 mailing, delivery, or transmission of the ballot., ~~with~~ The
825 costs of mailing, delivery, or electronic transmission and
826 copying shall ~~to~~ be borne by the association. The association is
827 not liable for the contents of the information sheets prepared
828 by the candidates. In order to reduce costs, the association may
829 print or duplicate the information sheets on both sides of the
830 paper. The division shall by rule establish voting procedures
831 consistent with the provisions contained herein, including rules
832 establishing procedures for giving notice by electronic
833 transmission and rules providing for the secrecy of ballots.
834 Elections shall be decided by a plurality of ~~those~~ ballots cast.
835 There shall be no quorum requirement; however, at least 20
836 percent of the eligible voters must cast a ballot in order to
837 have a valid election of members of the board. No unit owner
838 shall permit any other person to vote his or her ballot, and any
839 such ballots improperly cast shall be deemed invalid, provided
840 any unit owner who violates this provision may be fined by the

HB 831

2009

841 association in accordance with s. 718.303. A unit owner who
842 needs assistance in casting the ballot for the reasons stated in
843 s. 101.051 may obtain assistance in casting the ballot. The
844 regular election shall occur on the date of the annual meeting.
845 The provisions of this subparagraph shall not apply to timeshare
846 condominium associations. Notwithstanding the provisions of this
847 subparagraph, an election is not required unless more candidates
848 file notices of intent to run or are nominated than board
849 vacancies exist.

850 4. Any approval by unit owners called for by this chapter
851 or the applicable declaration or bylaws, including, but not
852 limited to, the approval requirement in s. 718.111(8), shall be
853 made at a duly noticed meeting of unit owners and shall be
854 subject to all requirements of this chapter or the applicable
855 condominium documents relating to unit owner decisionmaking,
856 except that unit owners may take action by written agreement,
857 without meetings, on matters for which action by written
858 agreement without meetings is expressly allowed by the
859 applicable bylaws or declaration or any statute that provides
860 for such action.

861 5. Unit owners may waive notice of specific meetings if
862 allowed by the applicable bylaws or declaration or any statute.
863 If authorized by the bylaws, notice of meetings of the board of
864 administration, unit owner meetings, except unit owner meetings
865 called to recall board members under paragraph (j), and
866 committee meetings may be given by electronic transmission to
867 unit owners who consent to receive notice by electronic
868 transmission.

HB 831

2009

869 6. Unit owners shall have the right to participate in
870 meetings of unit owners with reference to all designated agenda
871 items. However, the association may adopt reasonable rules
872 governing the frequency, duration, and manner of unit owner
873 participation.

874 7. Any unit owner may tape record or videotape a meeting
875 of the unit owners subject to reasonable rules adopted by the
876 division.

877 8. Unless otherwise provided in the bylaws, any vacancy
878 occurring on the board before the expiration of a term may be
879 filled by the affirmative vote of the majority of the remaining
880 directors, even if the remaining directors constitute less than
881 a quorum, or by the sole remaining director. In the alternative,
882 a board may hold an election to fill the vacancy, in which case
883 the election procedures must conform to the requirements of
884 subparagraph 3. unless the association governs 10 units or less
885 and has opted out of the statutory election process, in which
886 case the bylaws of the association control. Unless otherwise
887 provided in the bylaws, a board member appointed or elected
888 under this section shall fill the vacancy for the unexpired term
889 of the seat being filled. Filling vacancies created by recall is
890 governed by paragraph (j) and rules adopted by the division.

891
892 Notwithstanding subparagraphs (b)2. and (d)3., an association of
893 10 or fewer units may, by the affirmative vote of a majority of
894 the total voting interests, provide for different voting and
895 election procedures in its bylaws, which vote may be by a proxy
896 specifically delineating the different voting and election

HB 831

2009

897 | procedures. The different voting and election procedures may
898 | provide for elections to be conducted by limited or general
899 | proxy.

900 | (f) Annual budget.--

901 | 1. The proposed annual budget of estimated revenues and
902 | common expenses shall be detailed and shall show the amounts
903 | budgeted by accounts and expense classifications, including, if
904 | applicable, but not limited to, those expenses listed in s.
905 | 718.504(21). A multicondominium association shall adopt a
906 | separate budget of common expenses for each condominium the
907 | association operates and shall adopt a separate budget of common
908 | expenses for the association. In addition, if the association
909 | maintains limited common elements with the cost to be shared
910 | only by those entitled to use the limited common elements as
911 | provided for in s. 718.113(1), the budget or a schedule attached
912 | thereto shall show amounts budgeted therefor. If, after turnover
913 | of control of the association to the unit owners, any of the
914 | expenses listed in s. 718.504(21) are not applicable, they need
915 | not be listed.

916 | 2. In addition to annual operating expenses, the budget
917 | shall include reserve accounts for capital expenditures and
918 | deferred maintenance. These accounts shall include, but are not
919 | limited to, roof replacement, building painting, and pavement
920 | resurfacing, regardless of the amount of deferred maintenance
921 | expense or replacement cost, and for any other item for which
922 | the deferred maintenance expense or replacement cost exceeds
923 | \$10,000. The amount to be reserved shall be computed by means of
924 | a formula which is based upon estimated remaining useful life

HB 831

2009

925 and estimated replacement cost or deferred maintenance expense
926 of each reserve item. The association may adjust replacement
927 reserve assessments annually to take into account any changes in
928 estimates or extension of the useful life of a reserve item
929 caused by deferred maintenance. This subsection does not apply
930 to an adopted budget in which the members of an association have
931 determined, by a majority vote at a duly called meeting of the
932 association, to provide no reserves or less reserves than
933 required by this subsection. However, prior to turnover of
934 control of an association by a developer to unit owners other
935 than a developer pursuant to s. 718.301, the developer may vote
936 to waive the reserves or reduce the funding of reserves for the
937 first 2 fiscal years of the association's operation, beginning
938 with the fiscal year in which the initial declaration is
939 recorded, after which time reserves may be waived or reduced
940 only upon the vote of a majority of all nondeveloper voting
941 interests voting in person or by limited proxy at a duly called
942 meeting of the association. If a meeting of the unit owners has
943 been called to determine whether to waive or reduce the funding
944 of reserves, and no such result is achieved or a quorum is not
945 attained, the reserves as included in the budget shall go into
946 effect. After the turnover, the developer may vote its voting
947 interest to waive or reduce the funding of reserves.

948 3. Reserve funds and any interest accruing thereon shall
949 remain in the reserve account or accounts, and shall be used
950 only for authorized reserve expenditures unless their use for
951 other purposes is approved in advance by a majority vote at a
952 duly called meeting of the association. Prior to turnover of

HB 831

2009

953 control of an association by a developer to unit owners other
954 than the developer pursuant to s. 718.301, the developer-
955 controlled association shall not vote to use reserves for
956 purposes other than that for which they were intended without
957 the approval of a majority of all nondeveloper voting interests,
958 voting in person or by limited proxy at a duly called meeting of
959 the association.

960 4. The only voting interests which are eligible to vote on
961 questions that involve waiving or reducing the funding of
962 reserves, or using existing reserve funds for purposes other
963 than purposes for which the reserves were intended, are the
964 voting interests of the units subject to assessment to fund the
965 reserves in question. Proxy questions relating to waiving or
966 reducing the funding of reserves or using existing reserve funds
967 for purposes other than purposes for which the reserves were
968 intended shall contain the following statement in capitalized,
969 bold letters in a font size larger than any other used on the
970 face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN
971 PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY
972 RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED
973 SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

974 (n) Director or officer delinquencies.--A director or
975 officer more than 90 days delinquent in the payment of regular
976 or special assessments shall be deemed to have abandoned the
977 office, creating a vacancy in the office to be filled according
978 to law.

979 (o) Director or officer offenses.--A director or officer
980 charged by information or indictment with a felony theft or

981 embezzlement offense involving the association's funds or
 982 property shall be removed from office, creating a vacancy in the
 983 office to be filled according to law. While such director or
 984 officer has such criminal charge pending, he or she may not be
 985 appointed or elected to a position as a director or officer.
 986 However, should the charges be resolved without a finding of
 987 guilt, the director or officer shall be reinstated for the
 988 remainder of his or her term of office, if any.

989 Section 5. Paragraphs (d) and (e) of subsection (1) of
 990 section 718.115, Florida Statutes, are amended to read:

991 718.115 Common expenses and common surplus.--

992 (1)

993 (d) If ~~se~~ provided for in the declaration, the cost of a
 994 master antenna television system, ~~or~~ duly franchised cable
 995 television service, or broadband or Internet service obtained
 996 pursuant to a bulk contract shall be deemed a common expense. If
 997 the declaration does not provide for the cost of a master
 998 antenna television system, ~~or~~ duly franchised cable television
 999 service, or broadband or Internet service obtained under a bulk
 1000 contract as a common expense, the board may enter into such a
 1001 contract, and the cost of the service will be a common expense
 1002 but allocated on a per-unit basis rather than a percentage basis
 1003 if the declaration provides for other than an equal sharing of
 1004 common expenses, and any contract entered into before July 1,
 1005 1998, in which the cost of the service is not equally divided
 1006 among all unit owners, may be changed by vote of a majority of
 1007 the voting interests present at a regular or special meeting of
 1008 the association, to allocate the cost equally among all units.

HB 831

2009

1009 | The contract shall be for a term of not less than 2 years.
 1010 | 1. Any contract made by the board after the effective date
 1011 | hereof for a community antenna system, ~~or~~ duly franchised cable
 1012 | television service, or broadband or Internet service may be
 1013 | canceled by a majority of the voting interests present at the
 1014 | next regular or special meeting of the association. Any member
 1015 | may make a motion to cancel the ~~said~~ contract, but if no motion
 1016 | is made or if such motion fails to obtain the required majority
 1017 | at the next regular or special meeting, whichever occurs ~~is~~
 1018 | sooner, following the making of the contract, ~~then~~ such contract
 1019 | shall be deemed ratified for the term therein expressed.
 1020 | 2. Any such contract shall provide, and shall be deemed to
 1021 | provide if not expressly set forth, that any hearing-impaired or
 1022 | legally blind unit owner who does not occupy the unit with a
 1023 | non-hearing-impaired or sighted person, or any unit owner
 1024 | receiving supplemental security income under Title XVI of the
 1025 | Social Security Act or food stamps as administered by the
 1026 | Department of Children and Family Services pursuant to s.
 1027 | 414.31, may discontinue the service without incurring disconnect
 1028 | fees, penalties, or subsequent service charges, and, as to such
 1029 | units, the owners shall not be required to pay any common
 1030 | expenses charge related to such service. If less than all
 1031 | members of an association share the expenses of cable
 1032 | television, the expense shall be shared equally by all
 1033 | participating unit owners. The association may use the
 1034 | provisions of s. 718.116 to enforce payment of the shares of
 1035 | such costs by the unit owners receiving cable television.
 1036 | (e) The expense of installation, replacement, operation,

HB 831

2009

1037 repair, and maintenance of hurricane shutters or other hurricane
 1038 protection by the board pursuant to s. 718.113(5) shall
 1039 constitute a common expense as defined herein and shall be
 1040 collected as provided in this section if the association is
 1041 responsible for the maintenance, repair, and replacement of the
 1042 hurricane shutters or other hurricane protection pursuant to the
 1043 declaration of condominium. However, if the maintenance, repair,
 1044 and replacement of the hurricane shutters or other hurricane
 1045 protection is the responsibility of the unit owners pursuant to
 1046 the declaration of condominium, the cost of the installation of
 1047 the hurricane shutters or other hurricane protection shall not
 1048 be a common expense, but shall be charged individually to the
 1049 unit owners based on the cost of installation of the hurricane
 1050 shutters or other hurricane protection appurtenant to the unit.
 1051 Notwithstanding the provisions of s. 718.116(10) ~~s. 718.116(9)~~,
 1052 and regardless of whether or not the declaration requires the
 1053 association or unit owners maintain, repair, or replace
 1054 hurricane shutters or other hurricane protection, a unit owner
 1055 who has previously installed hurricane shutters in accordance
 1056 with s. 718.113(5), other hurricane protection, or laminated
 1057 glass architecturally designed to function as hurricane
 1058 protection, which hurricane shutters or other hurricane
 1059 protection or laminated glass comply with the current applicable
 1060 building code, shall receive a credit equal to the pro rata
 1061 portion of the assessed installation cost assigned to each unit.
 1062 However, such unit owner shall remain responsible for the pro
 1063 rata share of expenses for hurricane shutters or other hurricane
 1064 protection installed on common elements and association property

1065 by the board pursuant to s. 718.113(5), and shall remain
 1066 responsible for a pro rata share of the expense of the
 1067 replacement, operation, repair, and maintenance of such shutters
 1068 or other hurricane protection.

1069 Section 6. Paragraphs (b), (c), and (g) of subsection (1)
 1070 and paragraph (b) of subsection (6) of section 718.116, Florida
 1071 Statutes, are amended, present subsections (5) through (10) of
 1072 that section are renumbered as subsections (6) through (11),
 1073 respectively, and a new subsection (5) is added to that section,
 1074 to read:

1075 718.116 Assessments; liability; lien and priority;
 1076 interest; collection.--

1077 (1)

1078 (b) The liability of a first mortgagee or its successor or
 1079 assignees who acquire title to a unit by foreclosure or by deed
 1080 in lieu of foreclosure for the unpaid assessments that became
 1081 due before ~~prior to~~ the mortgagee's acquisition of title is
 1082 limited to the lesser of:

1083 1. The unit's unpaid common expenses, special assessments,
 1084 and regular periodic assessments which accrued or came due
 1085 during the 12 ~~6~~ months immediately preceding the acquisition of
 1086 title and for which payment in full has not been received by the
 1087 association; or

1088 2. Twenty ~~One~~ percent of the original mortgage debt. The
 1089 provisions of this paragraph apply only if the first mortgagee
 1090 joined the association as a defendant in the foreclosure action.
 1091 Joinder of the association is not required if, on the date the
 1092 complaint is filed, the association was dissolved or did not

HB 831

2009

1093 maintain an office or agent for service of process at a location
 1094 which was known to or reasonably discoverable by the mortgagee.

1095 (c) The person acquiring title shall pay the amount owed
 1096 to the association within 30 days after transfer of title.
 1097 Failure to pay the full amount when due shall entitle the
 1098 association to record a claim of lien against the parcel and
 1099 proceed in the same manner as provided in this section for the
 1100 collection of unpaid assessments. However, in the case of a
 1101 first mortgagee or its successor or assignees acquiring title to
 1102 a condominium parcel as a result of foreclosure of the mortgage
 1103 or by deed in lieu of foreclosure of the mortgage, the failure
 1104 to pay the full amount due within 30 days after transfer of
 1105 title entitles the association to recover all outstanding
 1106 special and regular assessments that became due before the
 1107 acquisition of title.

1108 (g) For purposes of this subsection, the term "successor
 1109 or assignee" as used with respect to a first mortgagee includes
 1110 only a subsequent holder of the first mortgage or an affiliate
 1111 or subsidiary of a parent entity that acquires title in lieu of
 1112 a transfer to the mortgage holder.

1113 (5) Except as otherwise provided in this chapter, a lien
 1114 may not be filed by the association against a condominium unit
 1115 until 30 days after the date on which a notice of intent to file
 1116 a lien is delivered to the owner by certified mail, return
 1117 receipt requested, and by first-class United States mail to the
 1118 owner at his or her last known address as reflected in the
 1119 records of the association. However, if the address reflected in
 1120 the records is outside the United States, the notice must be

1121 sent by first-class United States mail to the unit and to the
 1122 last known address by regular mail with international postage.
 1123 Delivery of the notice shall be deemed complete upon mailing as
 1124 required by this subsection. Alternatively, notice shall be
 1125 deemed complete if served upon the unit owner in the manner
 1126 authorized by chapter 48 and the Florida Rules of Civil
 1127 Procedure.

1128 (7) ~~(6)~~

1129 (b) No foreclosure judgment may be entered until at least
 1130 30 days after the association gives written notice to the unit
 1131 owner of its intention to foreclose its lien to collect the
 1132 unpaid assessments. If this notice is not given at least 30 days
 1133 before the foreclosure action is filed, and if the unpaid
 1134 assessments, including those coming due after the claim of lien
 1135 is recorded, are paid before the entry of a final judgment of
 1136 foreclosure, the association shall not recover attorney's fees
 1137 or costs. The notice must be given by delivery of a copy of it
 1138 to the unit owner or by certified or registered mail, return
 1139 receipt requested, addressed to the unit owner at his or her
 1140 last known address; and, upon such mailing, the notice shall be
 1141 deemed to have been given, and the court shall proceed with the
 1142 foreclosure action and may award attorney's fees and costs as
 1143 permitted by law. The notice requirements of this subsection are
 1144 satisfied if the unit owner records a notice of contest of lien
 1145 as provided in subsection (6) ~~(5)~~. The notice requirements of
 1146 this subsection do not apply if an action to foreclose a
 1147 mortgage on the condominium unit is pending before any court; if
 1148 the rights of the association would be affected by such

HB 831

2009

1149 foreclosure; and if actual, constructive, or substitute service
 1150 of process has been made on the unit owner.

1151 Section 7. Subsection (4) of section 718.121, Florida
 1152 Statutes, as amended by chapters 2008-28 and 2008-202, Laws of
 1153 Florida, is repealed.

1154 Section 8. Paragraph (b) of subsection (2) of section
 1155 720.304, Florida Statutes, is amended to read:

1156 720.304 Right of owners to peaceably assemble; display of
 1157 flag; SLAPP suits prohibited.--

1158 (2)

1159 (b) Any homeowner may erect a freestanding flagpole no
 1160 more than 20 feet high on any portion of the homeowner's real
 1161 property, regardless of any covenants, restrictions, bylaws,
 1162 rules, or requirements of the association, if the flagpole does
 1163 not obstruct sightlines at intersections and is not erected
 1164 within or upon an easement. The homeowner may further display in
 1165 a respectful manner from that flagpole, regardless of any
 1166 covenants, restrictions, bylaws, rules, or requirements of the
 1167 association, one official United States flag, not larger than
 1168 4 1/2 feet by 6 feet, and may additionally display one official
 1169 flag of the State of Florida or the United States Army, Navy,
 1170 Air Force, Marines, or Coast Guard, or a POW-MIA flag. Such
 1171 additional flag must be equal in size to or smaller than the
 1172 United States flag. The flagpole and display are subject to all
 1173 building codes, zoning setbacks, and other applicable
 1174 governmental regulations, including, but not limited to, noise
 1175 and lighting ordinances in the county or municipality in which
 1176 the flagpole is erected.

HB 831

2009

1177 Section 9. Subsection (3) of section 721.16, Florida
 1178 Statutes, is amended to read:

1179 721.16 Liens for overdue assessments; liens for labor
 1180 performed on, or materials furnished to, a timeshare unit.--

1181 (3) The lien is effective from the date of recording a
 1182 claim of lien in the public records of the county or counties in
 1183 which the accommodations and facilities constituting the
 1184 timeshare plan are located. The claim of lien shall state the
 1185 name of the timeshare plan and identify the timeshare interest
 1186 for which the lien is effective, state the name of the
 1187 purchaser, state the assessment amount due, and state the due
 1188 dates. Notwithstanding any provision of s. 718.116(6) (a) ~~s.~~
 1189 ~~718.116(5) (a)~~ or s. 719.108(4) to the contrary, the lien is
 1190 effective until satisfied or until 5 years have expired after
 1191 the date the claim of lien is recorded unless, within that time,
 1192 an action to enforce the lien is commenced pursuant to
 1193 subsection (2). A claim of lien for assessments may include only
 1194 assessments which are due when the claim is recorded. A claim of
 1195 lien shall be signed and acknowledged by an officer or agent of
 1196 the managing entity. Upon full payment, the person making the
 1197 payment is entitled to receive a satisfaction of the lien.

1198 Section 10. This act shall take effect July 1, 2009.