

1 A bill to be entitled
2 An act relating to condominium, cooperative, and
3 homeowners' associations; amending s. 633.0215, F.S.;
4 exempting certain residential buildings from a requirement
5 to install a manual fire alarm system; amending s.
6 718.111, F.S.; revising provisions relating to the
7 official records of condominium associations; providing
8 for disclosure of certain employment agreements with and
9 compensation paid to association employees; amending s.
10 718.112, F.S.; revising provisions relating to bylaws;
11 providing that board of administration meetings discussing
12 personnel matters are not open to unit owners; revising
13 requirements for electing the board of directors;
14 providing a definition; providing for continued office and
15 for filling vacancies under certain circumstances;
16 specifying unit owner eligibility for board membership;
17 requiring that certain educational curriculum be completed
18 within a specified time before or after the election or
19 appointment of a board director; providing application;
20 amending s. 718.113, F.S.; authorizing the board of a
21 condominium association to install impact glass or other
22 code-compliant windows under certain circumstances;
23 amending s. 718.114, F.S.; requiring the vote or written
24 consent of a majority of the total voting interests before
25 a condominium association may enter into certain
26 agreements to acquire leaseholds, memberships, or other
27 possessory or use interests; amending s. 718.116, F.S.;
28 revising provisions relating to condominium assessments;

29 requiring any rent payments received by an association
30 from a tenant to be applied to the unit owner's oldest
31 delinquent monetary obligation; conforming a cross-
32 reference; amending s. 718.117, F.S.; providing procedures
33 and requirements for termination of a condominium property
34 that has been totally destroyed or demolished; providing
35 procedures and requirements for partial termination of a
36 condominium property; requiring that a lien against a
37 condominium unit being terminated be transferred to the
38 proceeds of sale for certain portions of that property;
39 amending s. 718.303, F.S.; revising provisions relating to
40 imposing remedies against a delinquent unit owner or a
41 unit owner's tenant, guest, or invitee; providing for the
42 suspension of certain rights of use; revising provisions
43 relating to the suspension of a member's voting rights;
44 requiring that the suspension of certain rights of use and
45 voting rights be approved at a noticed board meeting;
46 amending s. 718.703, F.S.; redefining the term "bulk
47 assignee" and revising the definition of the term "bulk
48 buyer" for purposes of the Distressed Condominium Relief
49 Act; amending s. 718.704, F.S.; revising provisions
50 relating to the assignment and assumption of developer
51 rights by a bulk assignee; amending s. 718.705, F.S.;
52 revising provisions relating to the transfer of control of
53 a condominium board of administration to unit owners;
54 amending s. 718.706, F.S.; revising provisions relating to
55 the offering of units by a bulk assignee or bulk buyer;
56 amending s. 718.707, F.S.; revising the time limitation

57 | for classification as a bulk assignee or bulk buyer;
58 | amending s. 719.108, F.S.; requiring any rent payments
59 | received by a cooperative association from a tenant to be
60 | applied to the unit owner's oldest delinquent monetary
61 | obligation; amending s. 719.303, F.S.; revising provisions
62 | relating to imposing remedies against a delinquent unit
63 | owner or a unit owner's tenant, guest, or invitee;
64 | providing for the suspension of certain rights of use and
65 | voting rights; requiring that the suspension of certain
66 | rights of use and voting rights be approved at a noticed
67 | board meeting; amending s. 720.301, F.S.; revising the
68 | definition of the term "declaration of covenants";
69 | amending s. 720.303, F.S.; revising provisions relating to
70 | records that are not accessible to members of a
71 | homeowners' association; providing for disclosure of
72 | employment agreements with and compensation paid to
73 | association employees; amending s. 720.305, F.S.; revising
74 | provisions relating to imposing remedies against a
75 | delinquent member of a homeowners' association or any
76 | member's tenant, guest, or invitee; providing for the
77 | suspension of certain rights of use; revising provisions
78 | relating to the suspension of a member's voting rights;
79 | requiring that the suspension of certain rights of use and
80 | voting rights be approved at a noticed board meeting;
81 | amending s. 720.306, F.S.; specifying additional
82 | requirements for candidates to be a member of the board of
83 | a homeowners' association; amending s. 720.3085, F.S.;
84 | requiring any rent payments received by an association

85 from a tenant to be applied to the parcel owner's oldest
 86 delinquent monetary obligation; amending s. 720.309, F.S.;
 87 providing for the allocation of communications services by
 88 a homeowners' association; providing for the cancellation
 89 of communication contracts; providing that hearing-
 90 impaired or legally blind parcel owners and parcel owners
 91 receiving certain supplemental security income or food
 92 assistance may discontinue the service without incurring
 93 certain costs; providing that parcel residents may not be
 94 denied access to available franchised, licensed, or
 95 certificated cable or video service providers under
 96 certain circumstances; providing an effective date.

97

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

99

100 Section 1. Subsection (14) of section 633.0215, Florida
 101 Statutes, is amended to read:

102 633.0215 Florida Fire Prevention Code.—

103 (14) A condominium, cooperative, or multifamily
 104 residential building that is less than four ~~one or two~~ stories
 105 in height and has an exterior corridor providing a means of
 106 egress is exempt from installing a manual fire alarm system as
 107 required in s. 9.6 of the most recent edition of the Life Safety
 108 Code adopted in the Florida Fire Prevention Code. This
 109 subsection is intended to clarify existing law.

110 Section 2. Paragraphs (a) and (c) of subsection (12) of
 111 section 718.111, Florida Statutes, are amended to read:

112 718.111 The association.—

113 (12) OFFICIAL RECORDS.—

114 (a) From the inception of the association, the association
 115 shall maintain each of the following items, if applicable, which
 116 constitutes ~~shall constitute~~ the official records of the
 117 association:

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

120 2. A photocopy of the recorded declaration of condominium
 121 of each condominium operated by the association and ~~of~~ each
 122 amendment to each declaration.

123 3. A photocopy of the recorded bylaws of the association
 124 and ~~of~~ each amendment to the bylaws.

125 4. A certified copy of the articles of incorporation of
 126 the association, or other documents creating the association,
 127 and ~~of~~ each amendment thereto.

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

129 6. A book or books that ~~which~~ contain the minutes of all
 130 meetings of the association, ~~of~~ the board of administration, and
 131 the ~~of~~ unit owners, which minutes must be retained for at least
 132 7 years.

133 7. A current roster of all unit owners and their mailing
 134 addresses, unit identifications, voting certifications, and, if
 135 known, telephone numbers. The association shall also maintain
 136 the electronic mailing addresses and facsimile ~~the~~ numbers
 137 ~~designated by unit owners for receiving notice sent by~~
 138 ~~electronic transmission~~ of these unit owners consenting to
 139 receive notice by electronic transmission. The electronic
 140 mailing addresses and facsimile ~~telephone~~ numbers are not

CS/HB 1195

2011

141 accessible to unit owners ~~must be removed from association~~
142 ~~records~~ if consent to receive notice by electronic transmission
143 ~~is not provided in accordance with subparagraph (c)5~~ ~~revoked~~.
144 However, the association is not liable for an inadvertent
145 ~~erroneous~~ disclosure of the electronic mail address or facsimile
146 ~~the~~ number for receiving electronic transmission of notices.

147 8. All current insurance policies of the association and
148 condominiums operated by the association.

149 9. A current copy of any management agreement, lease, or
150 other contract to which the association is a party or under
151 which the association or the unit owners have an obligation or
152 responsibility.

153 10. Bills of sale or transfer for all property owned by
154 the association.

155 11. Accounting records for the association and separate
156 accounting records for each condominium that ~~which~~ the
157 association operates. All accounting records must ~~shall~~ be
158 maintained for at least 7 years. Any person who knowingly or
159 intentionally defaces or destroys such ~~accounting~~ records
160 ~~required to be created and maintained by this chapter during the~~
161 ~~period for which such records are required to be maintained,~~ or
162 who knowingly or intentionally fails to create or maintain such
163 records, with the intent of causing harm to the association or
164 one or more of its members, is personally subject to a civil
165 penalty pursuant to s. 718.501(1)(d). The accounting records
166 must include, but are not limited to:

167 a. Accurate, itemized, and detailed records of all
168 receipts and expenditures.

169 b. A current account and a monthly, bimonthly, or
 170 quarterly statement of the account for each unit designating the
 171 name of the unit owner, the due date and amount of each
 172 assessment, the amount paid on ~~upon~~ the account, and the balance
 173 due.

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

176 d. All contracts for work to be performed. Bids for work
 177 to be performed are also considered official records and must be
 178 maintained by the association.

179 12. Ballots, sign-in sheets, voting proxies, and all other
 180 papers relating to voting by unit owners, which must be
 181 maintained for 1 year from the date of the election, vote, or
 182 meeting to which the document relates, notwithstanding paragraph
 183 (b).

184 13. All rental records if the association is acting as
 185 agent for the rental of condominium units.

186 14. A copy of the current question and answer sheet as
 187 described in s. 718.504.

188 15. All other records of the association not specifically
 189 included in the foregoing which are related to the operation of
 190 the association.

191 16. A copy of the inspection report as described ~~provided~~
 192 in s. 718.301(4)(p).

193 (c) The official records of the association are open to
 194 inspection by any association member or the authorized
 195 representative of such member at all reasonable times. The right
 196 to inspect the records includes the right to make or obtain

197 | copies, at the reasonable expense, if any, of the member. The
198 | association may adopt reasonable rules regarding the frequency,
199 | time, location, notice, and manner of record inspections and
200 | copying. The failure of an association to provide the records
201 | within 10 working days after receipt of a written request
202 | creates a rebuttable presumption that the association willfully
203 | failed to comply with this paragraph. A unit owner who is denied
204 | access to official records is entitled to the actual damages or
205 | minimum damages for the association's willful failure to comply.
206 | Minimum damages are ~~shall be~~ \$50 per calendar day for up to 10
207 | days, beginning ~~the calculation to begin~~ on the 11th working day
208 | after receipt of the written request. The failure to permit
209 | inspection ~~of the association records as provided herein~~
210 | entitles any person prevailing in an enforcement action to
211 | recover reasonable attorney's fees from the person in control of
212 | the records who, directly or indirectly, knowingly denied access
213 | to the records. Any person who knowingly or intentionally
214 | defaces or destroys accounting records that are required by this
215 | chapter to be maintained during the period for which such
216 | records are required to be maintained, or who knowingly or
217 | intentionally fails to create or maintain accounting records
218 | that are required to be created or maintained, with the intent
219 | of causing harm to the association or one or more of its
220 | members, is personally subject to a civil penalty pursuant to s.
221 | 718.501(1)(d). The association shall maintain an adequate number
222 | of copies of the declaration, articles of incorporation, bylaws,
223 | and rules, and all amendments to each of the foregoing, as well
224 | as the question and answer sheet as described ~~provided for~~ in s.

225 718.504 and year-end financial information required under ~~in~~
 226 this section, on the condominium property to ensure their
 227 availability to unit owners and prospective purchasers, and may
 228 charge its actual costs for preparing and furnishing these
 229 documents to those requesting the documents. Notwithstanding ~~the~~
 230 ~~provisions of~~ this paragraph, the following records are not
 231 accessible to unit owners:

232 1. Any record protected by the lawyer-client privilege as
 233 described in s. 90.502~~7~~ and any record protected by the work-
 234 product privilege, including a ~~any~~ record prepared by an
 235 association attorney or prepared at the attorney's express
 236 direction,~~7~~ which reflects a mental impression, conclusion,
 237 litigation strategy, or legal theory of the attorney or the
 238 association, and which was prepared exclusively for civil or
 239 criminal litigation or for adversarial administrative
 240 proceedings, or which was prepared in anticipation of such
 241 ~~imminent civil or criminal~~ litigation or ~~imminent adversarial~~
 242 ~~administrative~~ proceedings until the conclusion of the
 243 litigation or ~~adversarial administrative~~ proceedings.

244 2. Information obtained by an association in connection
 245 with the approval of the lease, sale, or other transfer of a
 246 unit.

247 3. Personnel records of association or management company
 248 employees, including, but not limited to, disciplinary, payroll,
 249 health, and insurance records. For purposes of this
 250 subparagraph, the term "personnel records" does not include
 251 written employment agreements with an association employee or
 252 management company, or budgetary or financial records that

253 indicate the compensation paid to an association employee.
 254 4. Medical records of unit owners.
 255 5. Social security numbers, driver's license numbers,
 256 credit card numbers, e-mail addresses, telephone numbers,
 257 facsimile numbers, emergency contact information, ~~any~~ addresses
 258 of a unit owner other than as provided to fulfill the
 259 association's notice requirements, and other personal
 260 identifying information of any person, excluding the person's
 261 name, unit designation, mailing address, ~~and~~ property address,
 262 and any address, e-mail address, or facsimile number provided to
 263 the association to fulfill the association's notice
 264 requirements. However, an owner may consent in writing to the
 265 disclosure of protected information described in this
 266 subparagraph. The association is not liable for the inadvertent
 267 disclosure of information that is protected under this
 268 subparagraph if the information is included in an official
 269 record of the association and is voluntarily provided by an
 270 owner and not requested by the association.
 271 6. ~~Any~~ Electronic security measures ~~measure~~ that are ~~is~~
 272 used by the association to safeguard data, including passwords.
 273 7. The software and operating system used by the
 274 association which allow the ~~allows~~ manipulation of data, even if
 275 the owner owns a copy of the same software used by the
 276 association. The data is part of the official records of the
 277 association.
 278 Section 3. Paragraphs (b), (c), and (d) of subsection (2)
 279 of section 718.112, Florida Statutes, are amended to read:
 280 718.112 Bylaws.—

281 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
 282 following and, if they do not do so, shall be deemed to include
 283 the following:

284 (b) *Quorum; voting requirements; proxies.*—

285 1. Unless a lower number is provided in the bylaws, the
 286 percentage of voting interests required to constitute a quorum
 287 at a meeting of the members is ~~shall be~~ a majority of the voting
 288 interests. Unless otherwise provided in this chapter or in the
 289 declaration, articles of incorporation, or bylaws, and except as
 290 provided in subparagraph (d)4. ~~(d)3.~~, decisions shall be made by
 291 ~~owners of~~ a majority of the voting interests represented at a
 292 meeting at which a quorum is present.

293 2. Except as specifically otherwise provided herein, ~~after~~
 294 ~~January 1, 1992,~~ unit owners may not vote by general proxy, but
 295 may vote by limited proxies substantially conforming to a
 296 limited proxy form adopted by the division. A ~~No~~ voting interest
 297 or consent right allocated to a unit owned by the association
 298 may not ~~shall~~ be exercised or considered for any purpose,
 299 whether for a quorum, an election, or otherwise. Limited proxies
 300 and general proxies may be used to establish a quorum. Limited
 301 proxies shall be used for votes taken to waive or reduce
 302 reserves in accordance with subparagraph (f)2.; for votes taken
 303 to waive the financial reporting requirements of s. 718.111(13);
 304 for votes taken to amend the declaration pursuant to s. 718.110;
 305 for votes taken to amend the articles of incorporation or bylaws
 306 pursuant to this section; and for any other matter for which
 307 this chapter requires or permits a vote of the unit owners.
 308 Except as provided in paragraph (d), a ~~after January 1, 1992,~~ no

309 proxy, limited or general, may not ~~shall~~ be used in the election
 310 of board members. General proxies may be used for other matters
 311 for which limited proxies are not required, and may ~~also~~ be used
 312 in voting for nonsubstantive changes to items for which a
 313 limited proxy is required and given. Notwithstanding ~~the~~
 314 ~~provisions of~~ this subparagraph, unit owners may vote in person
 315 at unit owner meetings. This subparagraph does not ~~Nothing~~
 316 ~~contained herein shall~~ limit the use of general proxies or
 317 require the use of limited proxies for any agenda item or
 318 election at any meeting of a timeshare condominium association.

319 3. Any proxy given is ~~shall be~~ effective only for the
 320 specific meeting for which originally given and any lawfully
 321 adjourned meetings thereof. A ~~In no event shall any proxy is not~~
 322 ~~be valid for a period~~ longer than 90 days after the date of the
 323 first meeting for which it was given. Every proxy is revocable
 324 at any time at the pleasure of the unit owner executing it.

325 4. A member of the board of administration or a committee
 326 may submit in writing his or her agreement or disagreement with
 327 any action taken at a meeting that the member did not attend.
 328 This agreement or disagreement may not be used as a vote for or
 329 against the action taken or to create ~~and may not be used for~~
 330 ~~the purposes of creating~~ a quorum.

331 5. If ~~When~~ any of the board or committee members meet by
 332 telephone conference, those board or committee members ~~attending~~
 333 ~~by telephone conference~~ may be counted toward obtaining a quorum
 334 and may vote by telephone. A telephone speaker must be used so
 335 that the conversation of those ~~board or committee~~ members
 336 ~~attending by telephone~~ may be heard by the board or committee

337 members attending in person as well as by any unit owners
 338 present at a meeting.

339 (c) *Board of administration meetings.*—Meetings of the
 340 board of administration at which a quorum of the members is
 341 present are ~~shall be~~ open to all unit owners. A ~~Any~~ unit owner
 342 may tape record or videotape the meetings ~~of the board of~~
 343 ~~administration~~. The right to attend such meetings includes the
 344 right to speak at such meetings with reference to all designated
 345 agenda items. The division shall adopt reasonable rules
 346 governing the tape recording and videotaping of the meeting. The
 347 association may adopt written reasonable rules governing the
 348 frequency, duration, and manner of unit owner statements.

349 1. Adequate notice of all board meetings, which must
 350 ~~notice shall~~ specifically identify all ~~incorporate an~~
 351 ~~identification of~~ agenda items, must ~~shall~~ be posted
 352 conspicuously on the condominium property at least 48 continuous
 353 hours before ~~preceding~~ the meeting except in an emergency. If 20
 354 percent of the voting interests petition the board to address an
 355 item of business, the board ~~shall~~ at its next regular board
 356 meeting or at a special meeting of the board, but not later than
 357 60 days after the receipt of the petition, shall place the item
 358 on the agenda. Any item not included on the notice may be taken
 359 up on an emergency basis by at least a majority plus one of the
 360 board members ~~of the board~~. Such emergency action must ~~shall~~ be
 361 noticed and ratified at the next regular board meeting ~~of the~~
 362 ~~board~~. However, written notice of any meeting at which
 363 nonemergency special assessments, or at which amendment to rules
 364 regarding unit use, will be considered must ~~shall~~ be mailed,

365 delivered, or electronically transmitted to the unit owners and
 366 posted conspicuously on the condominium property at least ~~not~~
 367 ~~less than~~ 14 days before ~~prior to~~ the meeting. Evidence of
 368 compliance with this 14-day notice requirement must ~~shall~~ be
 369 made by an affidavit executed by the person providing the notice
 370 and filed with ~~among~~ the official records of the association.
 371 Upon notice to the unit owners, the board shall, by duly adopted
 372 rule, designate a specific location on the condominium ~~property~~
 373 or association property where ~~upon which~~ all notices of board
 374 meetings are to ~~shall~~ be posted. If there is no condominium
 375 property or association property where ~~upon which~~ notices can be
 376 posted, notices ~~of board meetings~~ shall be mailed, delivered, or
 377 electronically transmitted at least 14 days before the meeting
 378 to the owner of each unit. In lieu of or in addition to the
 379 physical posting of the notice ~~of any meeting of the board of~~
 380 ~~administration~~ on the condominium property, the association may,
 381 by reasonable rule, adopt a procedure for conspicuously posting
 382 and repeatedly broadcasting the notice and the agenda on a
 383 closed-circuit cable television system serving the condominium
 384 association. However, if broadcast notice is used in lieu of a
 385 notice ~~posted~~ physically posted on the condominium property, the
 386 notice and agenda must be broadcast at least four times every
 387 broadcast hour of each day that a posted notice is otherwise
 388 required under this section. If ~~When~~ broadcast notice is
 389 provided, the notice and agenda must be broadcast in a manner
 390 and for a sufficient continuous length of time so as to allow an
 391 average reader to observe the notice and read and comprehend the
 392 entire content of the notice and the agenda. Notice of any

393 meeting in which regular or special assessments against unit
 394 owners are to be considered for any reason must ~~shall~~
 395 specifically state that assessments will be considered and
 396 provide the nature, estimated cost, and description of the
 397 purposes for such assessments.

398 2. Meetings of a committee to take final action on behalf
 399 of the board or make recommendations to the board regarding the
 400 association budget are subject to ~~the provisions of~~ this
 401 paragraph. Meetings of a committee that does not take final
 402 action on behalf of the board or make recommendations to the
 403 board regarding the association budget are subject to ~~the~~
 404 ~~provisions of~~ this section, unless those meetings are exempted
 405 from this section by the bylaws of the association.

406 3. Notwithstanding any other law, the requirement that
 407 board meetings and committee meetings be open to the unit owners
 408 does not apply ~~is inapplicable~~ to:

409 a. Meetings between the board or a committee and the
 410 association's attorney, with respect to proposed or pending
 411 litigation, if ~~when~~ the meeting is held for the purpose of
 412 seeking or rendering legal advice; or

413 b. Board meetings held for the purpose of discussing
 414 personnel matters.

415 (d) *Unit owner meetings.*—

416 1. An annual meeting of the unit owners shall be held at
 417 the location provided in the association bylaws and, if the
 418 bylaws are silent as to the location, the meeting shall be held
 419 within 45 miles of the condominium property. However, such
 420 distance requirement does not apply to an association governing

421 a timeshare condominium.

422 2. Unless the bylaws provide otherwise, a vacancy on the
423 board caused by the expiration of a director's term shall be
424 filled by electing a new board member, and the election must be
425 by secret ballot. An election is not required ~~However,~~ if the
426 number of vacancies equals or exceeds the number of candidates,
427 ~~an election is not required.~~ For purposes of this paragraph, the
428 term "candidate" means an eligible person who has timely
429 submitted the written notice, as described in sub-subparagraph
430 4.a., of his or her intention to become a candidate. Except in a
431 timeshare condominium, or if the staggered term of a board
432 member does not expire until a later annual meeting, or if all
433 members terms would otherwise expire but there are no
434 candidates, the terms of all board members ~~of the board~~ expire
435 at the annual meeting, and such ~~board~~ members may stand for
436 reelection unless prohibited ~~otherwise permitted~~ by the bylaws.
437 If the bylaws permit staggered terms of no more than 2 years and
438 upon approval of a majority of the total voting interests, the
439 association board members may serve 2-year staggered terms. If
440 the number of board members whose terms expire at the annual
441 meeting equals or ~~have expired~~ exceeds the number of candidates,
442 the candidates become members of the board effective upon the
443 adjournment of the annual meeting. Unless the bylaws provide
444 otherwise, any remaining vacancies shall be filled by the
445 affirmative vote of the majority of the directors making up the
446 newly constituted board even if the directors constitute less
447 than a quorum or there is only one director ~~eligible members~~
448 ~~showing interest in or demonstrating an intention to run for the~~

CS/HB 1195

2011

449 ~~vacant positions, each board member whose term has expired is~~
450 ~~eligible for reappointment to the board of administration and~~
451 ~~need not stand for reelection.~~ In a condominium association of
452 more than 10 units or in a condominium association that does not
453 include timeshare units or timeshare interests, coowners of a
454 unit may not serve as members of the board of directors at the
455 same time unless they own more than one unit or unless there are
456 not enough eligible candidates to fill the vacancies on the
457 board at the time of the vacancy. Any unit owner desiring to be
458 a candidate for board membership must comply with sub-
459 subparagraph 4.a. and must be eligible to serve on the board of
460 directors at the time of the deadline for submitting a notice of
461 intent to run in order to have his or her name listed as a
462 proper candidate on the ballot or to serve on the board ~~3.a.~~ A
463 person who has been suspended or removed by the division under
464 this chapter, or who is delinquent in the payment of any fee,
465 fine, or special or regular assessment as provided in paragraph
466 (n), is not eligible for board membership. A person who has been
467 convicted of any felony in this state or in a United States
468 District or Territorial Court, or who has been convicted of any
469 offense in another jurisdiction which ~~that~~ would be considered a
470 felony if committed in this state, is not eligible for board
471 membership unless such felon's civil rights have been restored
472 for at least 5 years as of the date ~~on which~~ such person seeks
473 election to the board. The validity of an action by the board is
474 not affected if it is later determined that a board member ~~of~~
475 ~~the board~~ is ineligible for board membership due to having been
476 convicted of a felony.

Page 17 of 69

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

hb1195-01-c1

477 ~~3.2.~~ The bylaws must provide the method of calling
478 meetings of unit owners, including annual meetings. Written
479 notice, ~~which~~ must include an agenda, must ~~shall~~ be mailed, hand
480 delivered, or electronically transmitted to each unit owner at
481 least 14 days before the annual meeting, and must be posted in a
482 conspicuous place on the condominium property at least 14
483 continuous days before ~~preceding~~ the annual meeting. Upon notice
484 to the unit owners, the board shall, by duly adopted rule,
485 designate a specific location on the condominium property or
486 association property where ~~upon which~~ all notices of unit owner
487 meetings shall be posted. This requirement does not apply
488 ~~However,~~ if there is no condominium property or association
489 property for posting ~~upon which~~ notices ~~can be posted,~~ ~~this~~
490 ~~requirement does not apply.~~ In lieu of, or in addition to, the
491 physical posting of meeting notices, the association may, by
492 reasonable rule, adopt a procedure for conspicuously posting and
493 repeatedly broadcasting the notice and the agenda on a closed-
494 circuit cable television system serving the condominium
495 association. However, if broadcast notice is used ~~in lieu of a~~
496 ~~notice posted physically on the condominium property,~~ the notice
497 and agenda must be broadcast at least four times every broadcast
498 hour of each day that a posted notice is otherwise required
499 under this section. If broadcast notice is provided, the notice
500 and agenda must be broadcast in a manner and for a sufficient
501 continuous length of time so as to allow an average reader to
502 observe the notice and read and comprehend the entire content of
503 the notice and the agenda. Unless a unit owner waives in writing
504 the right to receive notice of the annual meeting, such notice

505 must be hand delivered, mailed, or electronically transmitted to
 506 each unit owner. Notice for meetings and notice for all other
 507 purposes must be mailed to each unit owner at the address last
 508 furnished to the association by the unit owner, or hand
 509 delivered to each unit owner. However, if a unit is owned by
 510 more than one person, the association must ~~shall~~ provide notice,
 511 ~~for meetings and all other purposes,~~ to the ~~that one~~ address
 512 that ~~which~~ the developer ~~initially~~ identifies for that purpose
 513 and thereafter as one or more of the owners of the unit ~~shall~~
 514 advise the association in writing, or if no address is given or
 515 the owners of the unit do not agree, to the address provided on
 516 the deed of record. An officer of the association, or the
 517 manager or other person providing notice of the association
 518 meeting, must ~~shall~~ provide an affidavit or United States Postal
 519 Service certificate of mailing, to be included in the official
 520 records of the association affirming that the notice was mailed
 521 or hand delivered, in accordance with this provision.

522 4.3. The members of the board shall be elected by written
 523 ballot or voting machine. Proxies may not be used in electing
 524 the board in general elections or elections to fill vacancies
 525 caused by recall, resignation, or otherwise, unless otherwise
 526 provided in this chapter.

527 a. At least 60 days before a scheduled election, the
 528 association shall mail, deliver, or electronically transmit,
 529 ~~whether~~ by separate association mailing or included in another
 530 association mailing, delivery, or transmission, including
 531 regularly published newsletters, to each unit owner entitled to
 532 a vote, a first notice of the date of the election. Any unit

CS/HB 1195

2011

533 owner or other eligible person desiring to be a candidate for
534 the board must give written notice of his or her intent to be a
535 candidate to the association at least 40 days before a scheduled
536 election. Together with the written notice and agenda as set
537 forth in subparagraph 3. 2., the association shall mail,
538 deliver, or electronically transmit a second notice of the
539 election to all unit owners entitled to vote, together with a
540 ballot that lists all candidates. Upon request of a candidate,
541 an information sheet, no larger than 8 1/2 inches by 11 inches,
542 which must be furnished by the candidate at least 35 days before
543 the election, must be included with the mailing, delivery, or
544 transmission of the ballot, with the costs of mailing, delivery,
545 or electronic transmission and copying to be borne by the
546 association. The association is not liable for the contents of
547 the information sheets prepared by the candidates. In order to
548 reduce costs, the association may print or duplicate the
549 information sheets on both sides of the paper. The division
550 shall by rule establish voting procedures consistent with this
551 sub-subparagraph, including rules establishing procedures for
552 giving notice by electronic transmission and rules providing for
553 the secrecy of ballots. Elections shall be decided by a
554 plurality of ~~those~~ ballots cast. There is no quorum requirement;
555 however, at least 20 percent of the eligible voters must cast a
556 ballot in order to have a valid election ~~of members of the~~
557 ~~board~~. A unit owner may not permit any other person to vote his
558 or her ballot, and any ballots improperly cast are invalid. A
559 ~~provided any~~ unit owner who violates this provision may be fined
560 by the association in accordance with s. 718.303. A unit owner

561 who needs assistance in casting the ballot for the reasons
562 stated in s. 101.051 may obtain such assistance. The regular
563 election must occur on the date of the annual meeting. ~~This sub-~~
564 ~~subparagraph does not apply to timeshare condominium~~
565 ~~associations.~~ Notwithstanding this sub-subparagraph, an election
566 is not required unless more candidates file notices of intent to
567 run or are nominated than board vacancies exist.

568 b. Within 90 days after being elected or appointed to the
569 board, each newly elected or appointed director shall certify in
570 writing to the secretary of the association that he or she has
571 read the association's declaration of condominium, articles of
572 incorporation, bylaws, and current written policies; that he or
573 she will work to uphold such documents and policies to the best
574 of his or her ability; and that he or she will faithfully
575 discharge his or her fiduciary responsibility to the
576 association's members. In lieu of this written certification,
577 within 90 days after being elected or appointed to the board,
578 the newly elected or appointed director may submit a certificate
579 of having satisfactorily completed ~~satisfactory completion of~~
580 the educational curriculum administered by a division-approved
581 condominium education provider within 1 year before or 90 days
582 after the date of election or appointment. The written
583 certification or educational certificate is valid and does not
584 have to be resubmitted as long as the director serves on the
585 board without interruption. A director who fails to timely file
586 the written certification or educational certificate is
587 suspended from service on the board until he or she complies
588 with this sub-subparagraph. The board may temporarily fill the

589 vacancy during the period of suspension. The secretary shall
590 cause the association to retain a director's written
591 certification or educational certificate for inspection by the
592 members for 5 years after a director's election. Failure to have
593 such written certification or educational certificate on file
594 does not affect the validity of any board action. This chapter
595 does not limit the use of general or limited proxies, require
596 the use of general or limited proxies, or require the use of a
597 written ballot or voting machine for any agenda item or election
598 at any meeting of a timeshare condominium association.

599 5.4. Any approval by unit owners called for by this
600 chapter or the applicable declaration or bylaws, including, but
601 not limited to, the approval requirement in s. 718.111(8), must
602 ~~shall~~ be made at a duly noticed meeting of unit owners and is
603 subject to all requirements of this chapter or the applicable
604 condominium documents relating to unit owner decisionmaking,
605 except that unit owners may take action by written agreement,
606 without meetings, on matters for which action by written
607 agreement without meetings is expressly allowed by the
608 applicable bylaws or declaration or any law ~~statute~~ that
609 provides for such action.

610 6.5. Unit owners may waive notice of specific meetings if
611 allowed by the applicable bylaws or declaration or any law
612 ~~statute~~. If authorized by the bylaws, notice of meetings of the
613 board of administration, unit owner meetings, except unit owner
614 meetings called to recall board members under paragraph (j), and
615 committee meetings may be given by electronic transmission to
616 unit owners who consent to receive notice by electronic

617 transmission.

618 ~~7.6.~~ Unit owners ~~shall~~ have the right to participate in
619 meetings of unit owners with reference to all designated agenda
620 items. However, the association may adopt reasonable rules
621 governing the frequency, duration, and manner of unit owner
622 participation.

623 ~~8.7.~~ A Any unit owner may tape record or videotape a
624 meeting of the unit owners subject to reasonable rules adopted
625 by the division.

626 ~~9.8.~~ Unless otherwise provided in the bylaws, any vacancy
627 occurring on the board before the expiration of a term may be
628 filled by the affirmative vote of the majority of the remaining
629 directors, even if the remaining directors constitute less than
630 a quorum, or by the sole remaining director. In the alternative,
631 a board may hold an election to fill the vacancy, in which case
632 the election procedures must conform to ~~the requirements of sub-~~
633 subparagraph 4.a. ~~3.a.~~ unless the association governs 10 units
634 or fewer and has opted out of the statutory election process, in
635 which case the bylaws of the association control. Unless
636 otherwise provided in the bylaws, a board member appointed or
637 elected under this section shall fill the vacancy for the
638 unexpired term of the seat being filled. Filling vacancies
639 created by recall is governed by paragraph (j) and rules adopted
640 by the division.

641
642 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a.
643 ~~(d)3.a.~~, an association of 10 or fewer units may, by affirmative
644 vote of a majority of the total voting interests, provide for

645 different voting and election procedures in its bylaws, which
 646 ~~vote~~ may be by a proxy specifically delineating the different
 647 voting and election procedures. The different voting and
 648 election procedures may provide for elections to be conducted by
 649 limited or general proxy.

650 Section 4. Subsection (5) of section 718.113, Florida
 651 Statutes, is amended to read:

652 718.113 Maintenance; limitation upon improvement; display
 653 of flag; hurricane shutters; display of religious decorations.—

654 (5) Each board of administration shall adopt hurricane
 655 shutter specifications for each building within each condominium
 656 operated by the association which shall include color, style,
 657 and other factors deemed relevant by the board. All
 658 specifications adopted by the board must ~~shall~~ comply with the
 659 applicable building code.

660 (a) The board may, subject to the provisions of s.
 661 718.3026, and the approval of a majority of voting interests of
 662 the condominium, install hurricane shutters, impact glass or
 663 other code-compliant windows, or hurricane protection that
 664 complies with or exceeds the applicable building code. However,
 665 ~~or both, except that~~ a vote of the owners is not required if the
 666 maintenance, repair, and replacement of hurricane shutters,
 667 impact glass, or other code-compliant windows ~~or other forms of~~
 668 ~~hurricane protection~~ are the responsibility of the association
 669 pursuant to the declaration of condominium. If ~~However,~~ where
 670 hurricane protection or laminated glass or window film
 671 architecturally designed to function as hurricane protection
 672 which complies with or exceeds the current applicable building

673 | code has been previously installed, the board may not install
 674 | hurricane shutters, ~~or other~~ hurricane protection, or impact
 675 | glass or other code-compliant windows except upon approval by a
 676 | majority vote of the voting interests.

677 | (b) The association is ~~shall be~~ responsible for the
 678 | maintenance, repair, and replacement of the hurricane shutters
 679 | or other hurricane protection authorized by this subsection if
 680 | such hurricane shutters or other hurricane protection is the
 681 | responsibility of the association pursuant to the declaration of
 682 | condominium. If the hurricane shutters or other hurricane
 683 | protection authorized by this subsection are the responsibility
 684 | of the unit owners pursuant to the declaration of condominium,
 685 | the ~~responsibility for the~~ maintenance, repair, and replacement
 686 | of such items are ~~shall be~~ the responsibility of the unit owner.

687 | (c) The board may operate shutters installed pursuant to
 688 | this subsection without permission of the unit owners only if
 689 | ~~where~~ such operation is necessary to preserve and protect the
 690 | condominium property and association property. The installation,
 691 | replacement, operation, repair, and maintenance of such shutters
 692 | in accordance with the procedures set forth in this paragraph
 693 | are ~~herein shall~~ not be deemed a material alteration to the
 694 | common elements or association property within the meaning of
 695 | this section.

696 | (d) Notwithstanding any other provision ~~to the contrary~~ in
 697 | the condominium documents, if approval is required by the
 698 | documents, a board may ~~shall~~ not refuse to approve the
 699 | installation or replacement of hurricane shutters by a unit
 700 | owner conforming to the specifications adopted by the board.

CS/HB 1195

2011

701 Section 5. Section 718.114, Florida Statutes, is amended
702 to read:

703 718.114 Association powers.—An association may ~~has the~~
704 ~~power to~~ enter into agreements, to acquire leaseholds,
705 memberships, and other possessory or use interests in lands or
706 facilities such as country clubs, golf courses, marinas, and
707 other recreational facilities, . It has this power whether or not
708 the lands or facilities are contiguous to the lands of the
709 condominium, if such lands and facilities ~~they~~ are intended to
710 provide enjoyment, recreation, or other use or benefit to the
711 unit owners. All of these leaseholds, memberships, and other
712 possessory or use interests existing or created at the time of
713 recording the declaration must be stated and fully described in
714 the declaration. Subsequent to the recording of the declaration,
715 agreements acquiring these leaseholds, memberships, or other
716 possessory or use interests which are not entered into within 12
717 months following the recording of the declaration are ~~shall be~~
718 ~~considered~~ a material alteration or substantial addition to the
719 real property that is association property, and the association
720 may not acquire or enter into such agreements ~~acquiring these~~
721 ~~leaseholds, memberships, or other possessory or use interests~~
722 except upon a vote of, or written consent by, a majority of the
723 total voting interests or as authorized by the declaration as
724 provided in s. 718.113. The declaration may provide that the
725 rental, membership fees, operations, replacements, and other
726 expenses are common expenses and may impose covenants and
727 restrictions concerning their use and may contain other
728 provisions not inconsistent with this chapter. A condominium

729 association may conduct bingo games as provided in s. 849.0931.

730 Section 6. Subsection (3), paragraph (b) of subsection
731 (5), and subsection (11) of section 718.116, Florida Statutes,
732 are amended to read:

733 718.116 Assessments; liability; lien and priority;
734 interest; collection.-

735 (3) Assessments and installments on assessments which are
736 not paid when due bear interest at the rate provided in the
737 declaration, from the due date until paid. The ~~This~~ rate may not
738 exceed the rate allowed by law, and, if no rate is provided in
739 the declaration, interest accrues at the rate of 18 percent per
740 year. ~~Also,~~ If provided by the declaration or bylaws, the
741 association may, in addition to such interest, charge an
742 administrative late fee of up to the greater of \$25 or 5 percent
743 of ~~each installment of the assessment for~~ each delinquent
744 installment for which the payment is late. Any payment received
745 by an association must be applied first to any interest accrued
746 by the association, then to any administrative late fee, then to
747 any costs and reasonable attorney's fees incurred in collection,
748 and then to the delinquent assessment. The foregoing is
749 applicable notwithstanding any restrictive endorsement,
750 designation, or instruction placed on or accompanying a payment.
751 A late fee is not subject to chapter 687 or s. 718.303 (4) ~~(3)~~.

752 (5)

753 (b) To be valid, a claim of lien must state the
754 description of the condominium parcel, the name of the record
755 owner, the name and address of the association, the amount due,
756 and the due dates. It must be executed and acknowledged by an

757 officer or authorized agent of the association. The lien is not
 758 effective ~~longer than~~ 1 year after the claim of lien was
 759 recorded unless, within that time, an action to enforce the lien
 760 is commenced. The 1-year period is automatically extended for
 761 any length of time during which the association is prevented
 762 from filing a foreclosure action by an automatic stay resulting
 763 from a bankruptcy petition filed by the parcel owner or any
 764 other person claiming an interest in the parcel. The claim of
 765 lien secures all unpaid assessments that are due and that may
 766 accrue after the claim of lien is recorded and through the entry
 767 of a final judgment, as well as interest and all reasonable
 768 costs and attorney's fees incurred by the association incident
 769 to the collection process. Upon payment in full, the person
 770 making the payment is entitled to a satisfaction of the lien.

771
 772 After notice of contest of lien has been recorded, the clerk of
 773 the circuit court shall mail a copy of the recorded notice to
 774 the association by certified mail, return receipt requested, at
 775 the address shown in the claim of lien or most recent amendment
 776 to it and shall certify to the service on the face of the
 777 notice. Service is complete upon mailing. After service, the
 778 association has 90 days in which to file an action to enforce
 779 the lien; and, if the action is not filed within the 90-day
 780 period, the lien is void. However, the 90-day period shall be
 781 extended for any length of time during which ~~that~~ the
 782 association is prevented from filing its action because of an
 783 automatic stay resulting from the filing of a bankruptcy
 784 petition by the unit owner or by any other person claiming an

785 interest in the parcel.

786 (11) If the unit is occupied by a tenant and the unit
 787 owner is delinquent in paying any monetary obligation due to the
 788 association, the association may make a written demand that the
 789 tenant pay rent to the association ~~the future monetary~~
 790 ~~obligations related to the condominium unit to the association,~~
 791 and continue to the tenant must make such payments until all
 792 monetary obligations of the unit owner related to the unit have
 793 been paid in full to the association ~~payment. The demand is~~
 794 ~~continuing in nature and, upon demand,~~ The tenant must pay the
 795 monetary obligations to the association until the association
 796 releases the tenant or the tenant discontinues tenancy in the
 797 unit. The association must mail written notice to the unit owner
 798 of the association's demand that the tenant make payments to the
 799 association. The association shall, upon request, provide the
 800 tenant with written receipts for payments made. A tenant ~~who~~
 801 ~~acts in good faith in response to a written demand from an~~
 802 ~~association~~ is immune from any claim by ~~from~~ the unit owner
 803 related to the rent once the association has made written
 804 demand. Any payment received from a tenant must be applied to
 805 the unit owner's oldest delinquent monetary obligation.

806 (a) If the tenant paid ~~prepaid~~ rent to the unit owner for
 807 a given rental period before receiving the demand from the
 808 association and provides written evidence of prepaying ~~paying~~
 809 the rent to the association within 14 days after receiving the
 810 demand, the tenant shall receive credit for the prepaid rent for
 811 the applicable period but ~~and~~ must make any subsequent rental
 812 payments to the association to be credited against the monetary

813 obligations of the unit owner ~~to the association.~~

814 (b) The tenant is not liable for increases in the amount
 815 of the monetary obligations due unless the tenant was notified
 816 in writing of the increase at least 10 days before the date the
 817 rent is due. The liability of the tenant may not exceed the
 818 amount due from the tenant to the tenant's landlord. The
 819 tenant's landlord shall provide the tenant a credit against
 820 rents due to the unit owner in the amount of moneys paid to the
 821 association ~~under this section.~~

822 (c) The association may issue notices under s. 83.56 and
 823 ~~may~~ sue for eviction under ss. 83.59-83.625 as if the
 824 association were a landlord under part II of chapter 83 if the
 825 tenant fails to pay a required payment to the association.
 826 However, the association is not otherwise considered a landlord
 827 under chapter 83 and specifically has no obligations ~~duties~~
 828 under s. 83.51.

829 (d) The tenant does not, by virtue of payment of rent
 830 ~~monetary obligations~~ to the association, have any of the rights
 831 of a unit owner to vote in any election or to examine the books
 832 and records of the association.

833 (e) A court may supersede the effect of this subsection by
 834 appointing a receiver.

835 Section 7. Subsections (2), (3), (4), and (11), paragraphs
 836 (a) and (d) of subsection (12), subsection (14), paragraph (a)
 837 of subsection (17), and subsections (18) and (19) of section
 838 718.117, Florida Statutes, are amended to read:

839 718.117 Termination of condominium.—

840 (2) TERMINATION BECAUSE OF ECONOMIC WASTE OR

CS/HB 1195

2011

841 IMPOSSIBILITY.—

842 (a) Notwithstanding any provision in the declaration, the
843 condominium form of ownership of a property may be terminated by
844 a plan of termination approved by the lesser of the lowest
845 percentage of voting interests necessary to amend the
846 declaration or as otherwise provided in the declaration for
847 approval of termination if:

848 1. The total estimated cost of construction or repairs
849 necessary to construct the intended improvements or restore the
850 improvements to their former condition or bring them into
851 compliance with applicable laws or regulations exceeds the
852 combined fair market value of the units in the condominium after
853 completion of the construction or repairs; or

854 2. It becomes impossible to operate or reconstruct a
855 condominium to its prior physical configuration because of land
856 use laws or regulations.

857 (b) Notwithstanding paragraph (a), a condominium in which
858 75 percent or more of the units are timeshare units may be
859 terminated only pursuant to a plan of termination approved by 80
860 percent of the total voting interests of the association and the
861 holders of 80 percent of the original principal amount of
862 outstanding recorded mortgage liens of timeshare estates in the
863 condominium, unless the declaration provides for a lower voting
864 percentage.

865 (c) Notwithstanding paragraph (a), a condominium that
866 includes units and timeshare estates where the improvements have
867 been totally destroyed or demolished may be terminated pursuant
868 to a plan of termination proposed by a unit owner upon the

869 filing of a petition in court seeking equitable relief. Within
 870 10 days after the filing of a petition as provided in this
 871 paragraph and in lieu of the requirements of paragraph (15) (a),
 872 the petitioner shall record the proposed plan of termination and
 873 mail a copy of the proposed plan and a copy of the petition to:

874 1. If the association has not been dissolved as a matter
 875 of law, each member of the board of directors of the association
 876 identified in the most recent annual report filed with the
 877 Department of State and the registered agent of the association;

878 2. The managing entity as defined in s. 721.05(22);

879 3. Each unit owner and each timeshare estate owner at the
 880 address reflected in the official records of the association,
 881 or, if the association records cannot be obtained by the
 882 petitioner, each unit owner and each timeshare estate owner at
 883 the address listed in the office of the tax collector for tax
 884 notices; and

885 4. Each holder of a recorded mortgage lien affecting a
 886 unit or timeshare estate at the address appearing on the
 887 recorded mortgage or any recorded assignment thereof.

888
 889 The association, if it has not been dissolved as a matter of
 890 law, acting as class representative, or the managing entity as
 891 defined in s. 721.05(22), any unit owner, any timeshare estate
 892 owner, or any holder of a recorded mortgage lien affecting a
 893 unit or timeshare estate may intervene in the proceedings to
 894 contest the proposed plan of termination brought pursuant to
 895 this paragraph. The provisions of subsection (9), to the extent
 896 inconsistent with this paragraph, and subsection (16) are not

897 applicable to a party contesting a plan of termination under
 898 this paragraph. If no party intervenes to contest the proposed
 899 plan within 45 days after the filing of the petition, the
 900 petitioner may move the court to enter a final judgment to
 901 authorize implementation of the plan of termination. If a party
 902 timely intervenes to contest the proposed plan, the plan may not
 903 be implemented until a final judgment has been entered by the
 904 court finding that the proposed plan of termination is fair and
 905 reasonable and authorizing implementation of the plan.

906 (3) OPTIONAL TERMINATION.—Except as provided in subsection
 907 (2) or unless the declaration provides for a lower percentage,
 908 the condominium form of ownership ~~of the property~~ may be
 909 terminated for all or a portion of the condominium property
 910 pursuant to a plan of termination approved by at least 80
 911 percent of the total voting interests of the condominium if no
 912 ~~not~~ more than 10 percent of the total voting interests of the
 913 condominium have rejected the plan of termination by negative
 914 vote or by providing written objections ~~thereto~~. This subsection
 915 does not apply to condominiums in which 75 percent or more of
 916 the units are timeshare units.

917 (4) EXEMPTION.—A plan of termination is not an amendment
 918 subject to s. 718.110(4). In a partial termination, a plan of
 919 termination is not an amendment subject to s. 718.110(4) if the
 920 ownership share of the common elements of a surviving unit in
 921 the condominium remains in the same proportion to the surviving
 922 units as it was before the partial termination.

923 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL
 924 TERMINATION.—

925 (a) The plan of termination may provide that each unit
 926 owner retains the exclusive right of possession to the portion
 927 of the real estate which ~~that~~ formerly constituted the unit if
 928 ~~in which case~~ the plan specifies ~~must specify~~ the conditions of
 929 possession. In a partial termination, the plan of termination as
 930 specified in subsection (10) must also identify the units that
 931 survive the partial termination and provide that such units
 932 remain in the condominium form of ownership pursuant to an
 933 amendment to the declaration of condominium or an amended and
 934 restated declaration. In a partial termination, title to the
 935 surviving units and common elements that remain part of the
 936 condominium property specified in the plan of termination remain
 937 vested in the ownership shown in the public records and do not
 938 vest in the termination trustee.

939 (b) In a conditional termination, the plan must specify
 940 the conditions for termination. A conditional plan does not vest
 941 title in the termination trustee until the plan and a
 942 certificate executed by the association with the formalities of
 943 a deed, confirming that the conditions in the conditional plan
 944 have been satisfied or waived by the requisite percentage of the
 945 voting interests, have been recorded. In a partial termination,
 946 the plan does not vest title to the surviving units or common
 947 elements that remain part of the condominium property in the
 948 termination trustee.

949 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
 950 PROPERTY.—

951 (a) Unless the declaration expressly provides for the
 952 allocation of the proceeds of sale of condominium property, the

953 | plan of termination must first apportion the proceeds between
 954 | the aggregate value of all units and the value of the common
 955 | elements, based on their respective fair market values
 956 | immediately before the termination, as determined by one or more
 957 | independent appraisers selected by the association or
 958 | termination trustee. In a partial termination, the aggregate
 959 | values of the units and common elements that are being
 960 | terminated must be separately determined, and the plan of
 961 | termination must specify the allocation of the proceeds of sale
 962 | for the units and common elements.

963 | (d) Liens that encumber a unit shall be transferred to the
 964 | proceeds of sale of the condominium property and the proceeds of
 965 | sale or other distribution of association property, common
 966 | surplus, or other association assets attributable to such unit
 967 | in their same priority. In a partial termination, liens that
 968 | encumber a unit being terminated must be transferred to the
 969 | proceeds of sale of that portion of the condominium property
 970 | being terminated which are attributable to such unit. The
 971 | proceeds of any sale of condominium property pursuant to a plan
 972 | of termination may not be deemed to be common surplus or
 973 | association property.

974 | (14) TITLE VESTED IN TERMINATION TRUSTEE.—If termination
 975 | is pursuant to a plan of termination under subsection (2) or
 976 | subsection (3), ~~the unit owners' rights and title to as tenants~~
 977 | ~~in common in undivided interests in the condominium property~~
 978 | being terminated vests vest in the termination trustee when the
 979 | plan is recorded or at a later date specified in the plan. The
 980 | unit owners thereafter become the beneficiaries of the proceeds

981 realized from the plan of termination as set forth in the plan.
 982 The termination trustee may deal with the condominium property
 983 being terminated or any interest therein if the plan confers on
 984 the trustee the authority to protect, conserve, manage, sell, or
 985 dispose of the condominium property. The trustee, on behalf of
 986 the unit owners, may contract for the sale of real property
 987 being terminated, but the contract is not binding on the unit
 988 owners until the plan is approved pursuant to subsection (2) or
 989 subsection (3).

990 (17) DISTRIBUTION.—

991 (a) Following termination of the condominium, the
 992 condominium property, association property, common surplus, and
 993 other assets of the association shall be held by the termination
 994 trustee pursuant to the plan of termination, as trustee for unit
 995 owners and holders of liens on the units, in their order of
 996 priority unless otherwise set forth in the plan of termination.

997 (18) ASSOCIATION STATUS.—The termination of a condominium
 998 does not change the corporate status of the association that
 999 operated the condominium property. The association continues to
 1000 exist to conclude its affairs, prosecute and defend actions by
 1001 or against it, collect and discharge obligations, dispose of and
 1002 convey its property, and collect and divide its assets, but not
 1003 to act except as necessary to conclude its affairs. In a partial
 1004 termination, the association may continue as the condominium
 1005 association for the property that remains subject to the
 1006 declaration of condominium.

1007 (19) CREATION OF ANOTHER CONDOMINIUM.—The termination or
 1008 partial termination of a condominium does not bar the filing of

CS/HB 1195

2011

1009 a new declaration of condominium ~~or an amended and restated~~
 1010 ~~declaration of condominium~~ by the termination trustee, or the
 1011 trustee's successor in interest, for the terminated property or
 1012 affecting any portion thereof of the same property. The partial
 1013 termination of a condominium may provide for the simultaneous
 1014 filing of an amendment to the declaration of condominium or an
 1015 amended and restated declaration of condominium by the
 1016 condominium association for any portion of the property not
 1017 terminated from the condominium form of ownership.

1018 Section 8. Subsections (3), (4), and (5) of section
 1019 718.303, Florida Statutes, are amended, and subsection (6) is
 1020 added to that section, to read:

1021 718.303 Obligations of owners and occupants; remedies.—

1022 (3) ~~If a unit owner is delinquent for more than 90 days in~~
 1023 ~~paying a monetary obligation due to the association, the~~
 1024 ~~association may suspend the right of a unit owner or a unit's~~
 1025 ~~occupant, licensee, or invitee to use common elements, common~~
 1026 ~~facilities, or any other association property until the monetary~~
 1027 ~~obligation is paid. This subsection does not apply to limited~~
 1028 ~~common elements intended to be used only by that unit, common~~
 1029 ~~elements that must be used to access the unit, utility services~~
 1030 ~~provided to the unit, parking spaces, or elevators. The~~
 1031 ~~association may also~~ levy reasonable fines for the failure of
 1032 the owner of the unit~~,~~ or its occupant, licensee, or invitee~~,~~ to
 1033 comply with any provision of the declaration, the association
 1034 bylaws, or reasonable rules of the association. A fine may ~~does~~
 1035 not become a lien against a unit. ~~A fine may not exceed \$100 per~~
 1036 ~~violation. However,~~ A fine may be levied on the basis of each

1037 day of a continuing violation, with a single notice and
 1038 opportunity for hearing. However, the fine may not exceed \$100
 1039 per violation, or \$1,000 in the aggregate ~~exceed \$1,000~~.

1040 (a) An association may suspend, for a reasonable period of
 1041 time, the right of a unit owner, or a unit owner's tenant,
 1042 guest, or invitee, to use the common elements, common
 1043 facilities, or any other association property for failure to
 1044 comply with any provision of the declaration, the association
 1045 bylaws, or reasonable rules of the association.

1046 (b) A fine or suspension may not be imposed ~~levied and a~~
 1047 ~~suspension may not be imposed~~ unless the association first
 1048 provides at least 14 days' written notice and an opportunity for
 1049 a hearing to the unit owner and, if applicable, its occupant,
 1050 licensee, or invitee. The hearing must be held before a
 1051 committee of other unit owners who are neither board members nor
 1052 persons residing in a board member's household. If the committee
 1053 does not agree ~~with the fine or suspension~~, the fine or
 1054 suspension may not be ~~levied or~~ imposed.

1055 (4) If a unit owner is more than 90 days delinquent in
 1056 paying a monetary obligation due to the association, the
 1057 association may suspend the right of the unit owner or the
 1058 unit's occupant, licensee, or invitee to use common elements,
 1059 common facilities, or any other association property until the
 1060 monetary obligation is paid in full. This subsection does not
 1061 apply to limited common elements intended to be used only by
 1062 that unit, common elements needed to access the unit, utility
 1063 services provided to the unit, parking spaces, or elevators. The
 1064 notice and hearing requirements under subsection (3) do not

1065 apply to suspensions imposed under this subsection.

1066 ~~(4) The notice and hearing requirements of subsection (3)~~
 1067 ~~do not apply to the imposition of suspensions or fines against a~~
 1068 ~~unit owner or a unit's occupant, licensee, or invitee because of~~
 1069 ~~failing to pay any amounts due the association. If such a fine~~
 1070 ~~or suspension is imposed, the association must levy the fine or~~
 1071 ~~impose a reasonable suspension at a properly noticed board~~
 1072 ~~meeting, and after the imposition of such fine or suspension,~~
 1073 ~~the association must notify the unit owner and, if applicable,~~
 1074 ~~the unit's occupant, licensee, or invitee by mail or hand~~
 1075 ~~delivery.~~

1076 (5) An association may ~~also~~ suspend the voting rights of a
 1077 member due to nonpayment of any monetary obligation due to the
 1078 association which is more than 90 days delinquent. The
 1079 suspension ends upon full payment of all obligations currently
 1080 due or overdue the association. A voting interest or consent
 1081 right allocated to a unit which has been suspended by the
 1082 association may not be exercised or considered for any purpose,
 1083 including, but not limited to, a quorum, an election, or the
 1084 votes required to approve an action under this chapter or
 1085 pursuant to the declaration, articles of incorporation, or
 1086 bylaws. The notice and hearing requirements under subsection (3)
 1087 do not apply to a suspension imposed under this subsection.

1088 (6) All suspensions imposed pursuant to subsection (4) or
 1089 subsection (5) must be approved at a properly noticed board
 1090 meeting. Upon approval, the association must notify the unit
 1091 owner and, if applicable, the unit's occupant, licensee, or
 1092 invitee by mail or hand delivery.

1093 Section 9. Section 718.703, Florida Statutes, is amended
 1094 to read:

1095 718.703 Definitions.—As used in this part, the term:

1096 (1) "Bulk assignee" means a person who is not a bulk buyer
 1097 and who:

1098 (a) Acquires more than seven condominium parcels in a
 1099 single condominium as set forth in s. 718.707; and

1100 (b) Receives an assignment of any of the developer rights,
 1101 other than or in addition to those rights described in
 1102 subsection (2), ~~some or all of the rights of the developer~~ as
 1103 set forth in the declaration of condominium or this chapter: ~~by~~

1104 1. By a written instrument recorded as part of or as an
 1105 exhibit to the deed; ~~or as~~

1106 2. By a separate instrument recorded in the public records
 1107 of the county in which the condominium is located; or

1108 3. Pursuant to a final judgment or certificate of title
 1109 issued in favor of a purchaser at a foreclosure sale.

1110
 1111 A mortgagee or its assignee may not be deemed a bulk assignee or
 1112 a developer by reason of the acquisition of condominium units
 1113 and receipt of an assignment of some or all of a developer
 1114 rights unless the mortgagee or its assignee exercises any of the
 1115 developer rights other than those described in subsection (2).

1116 (2) "Bulk buyer" means a person who acquires more than
 1117 seven condominium parcels in a single condominium as set forth
 1118 in s. 718.707, but who does not receive an assignment of any
 1119 developer rights, or receives only some or all of the following
 1120 rights: ~~other than~~

CS/HB 1195

2011

1121 (a) The right to conduct sales, leasing, and marketing
 1122 activities within the condominium;

1123 (b) The right to be exempt from the payment of working
 1124 capital contributions to the condominium association arising out
 1125 of, or in connection with, the bulk buyer's acquisition of the a
 1126 ~~bulk number of~~ units; and

1127 (c) The right to be exempt from any rights of first
 1128 refusal which may be held by the condominium association and
 1129 would otherwise be applicable to subsequent transfers of title
 1130 from the bulk buyer to a third party purchaser concerning one or
 1131 more units.

1132 Section 10. Section 718.704, Florida Statutes, is amended
 1133 to read:

1134 718.704 Assignment and assumption of developer rights by
 1135 bulk assignee; bulk buyer.—

1136 (1) A bulk assignee is deemed to have assumed ~~assumes~~ and
 1137 is liable for all duties and responsibilities of the developer
 1138 under the declaration and this chapter upon its acquisition of
 1139 title to units and continuously thereafter, except that it is
 1140 not liable for:

1141 (a) Warranties of the developer under s. 718.203(1) or s.
 1142 718.618, except as expressly provided by the bulk assignee in a
 1143 prospectus or offering circular, or the contract for purchase
 1144 and sale executed with a purchaser, or for design, construction,
 1145 development, or repair work performed by or on behalf of the
 1146 ~~such~~ bulk assignee.†

1147 (b) The obligation to:

1148 1. Fund converter reserves under s. 718.618 for a unit

CS/HB 1195

2011

1149 that was not acquired by the bulk assignee; or

1150 2. Provide implied ~~converter~~ warranties on any portion of
1151 the condominium property except as expressly provided by the
1152 bulk assignee in a prospectus or offering circular, or the
1153 contract for purchase and sale executed with a purchaser, or for
1154 ~~and pertaining to any~~ design, construction, development, or
1155 repair work performed by or on behalf of the bulk assignee.†

1156 (c) The requirement to provide the association with a
1157 cumulative audit of the association's finances from the date of
1158 formation of the condominium association as required by s.
1159 718.301(4)(c). However, the bulk assignee must provide an audit
1160 for the period during which the bulk assignee elects or appoints
1161 a majority of the members of the board of administration.†

1162 (d) Any liability arising out of or in connection with
1163 actions taken by the board of administration or the developer-
1164 appointed directors before the bulk assignee elects or appoints
1165 a majority of the members of the board of administration.† ~~and~~

1166 (e) Any liability for or arising out of the developer's
1167 failure to fund previous assessments or to resolve budgetary
1168 deficits in relation to a developer's right to guarantee
1169 assessments, except as otherwise provided in subsection (2).

1170
1171 The bulk assignee is ~~also~~ responsible only for delivering
1172 documents and materials in accordance with s. 718.705(3). A bulk
1173 assignee may expressly assume some or all of the developer
1174 obligations ~~of the developer~~ described in paragraphs (a)-(e).

1175 (2) A bulk assignee assigned the developer right receiving
1176 ~~the assignment of the rights of the developer~~ to guarantee the

1177 level of assessments and fund budgetary deficits pursuant to s.
 1178 718.116 assumes and is liable for all obligations of the
 1179 developer with respect to such guarantee upon its acquisition of
 1180 title to the units and continuously thereafter, including any
 1181 applicable funding of reserves to the extent required by law,
 1182 for as long as the guarantee remains in effect. A bulk assignee
 1183 not receiving such assignment, or a bulk buyer, does not assume
 1184 and is not liable for the obligations of the developer with
 1185 respect to such guarantee, but is responsible for payment of
 1186 assessments due on or after acquisition of the units in the same
 1187 manner as all other owners of condominium parcels or as
 1188 otherwise provided in s. 718.116.

1189 (3) A bulk buyer is liable for the duties and
 1190 responsibilities of a ~~the~~ developer under the declaration and
 1191 this chapter only to the extent that such ~~provided in this part,~~
 1192 ~~together with any other~~ duties or responsibilities are of the
 1193 ~~developer~~ expressly assumed in writing by the bulk buyer.

1194 (4) An acquirer of condominium parcels is not a bulk
 1195 assignee or a bulk buyer if the transfer to such acquirer was
 1196 made:

1197 (a) Before the effective date of this part;

1198 (b) With the intent to hinder, delay, or defraud any
 1199 purchaser, unit owner, or the association; ; ~~or if the acquirer~~
 1200 ~~is~~

1201 (c) By a person who would be considered an insider under
 1202 s. 726.102(7).

1203 (5) An assignment of developer rights to a bulk assignee
 1204 may be made by a ~~the~~ developer, a previous bulk assignee, a

1205 mortgagee or assignee who has acquired title to the units and
 1206 received an assignment of rights, or a court acting on behalf of
 1207 the developer or the previous bulk assignee if such developer
 1208 rights are held by the predecessor in title to the bulk
 1209 assignee. At any particular time, there may not be ~~no~~ more than
 1210 one bulk assignee within a condominium; however, ~~but~~ there may
 1211 be more than one bulk buyer. If more than one acquirer of
 1212 condominium parcels in the same condominium receives an
 1213 assignment of developer rights in addition to those rights
 1214 described in s. 718.703(2) ~~from the same person,~~ the bulk
 1215 assignee is the acquirer whose instrument of assignment is
 1216 recorded first in the public records of the county in which the
 1217 condominium is located, and any subsequent purported bulk
 1218 assignee may still qualify as a bulk buyer.

1219 Section 11. Subsections (1) and (3) of section 718.705,
 1220 Florida Statutes, are amended to read:

1221 718.705 Board of administration; transfer of control.—

1222 (1) If, at the time the bulk assignee acquires title to
 1223 the units and receives an assignment of developer rights, the
 1224 developer has not relinquished control of the board of
 1225 administration, for purposes of determining the timing for
 1226 transfer of control of the board of administration of the
 1227 association ~~to unit owners other than the developer under s.~~
 1228 ~~718.301(1)(a) and (b), if a bulk assignee is entitled to elect a~~
 1229 ~~majority of the members of the board,~~ a condominium parcel
 1230 acquired by the bulk assignee is not deemed to be conveyed to a
 1231 purchaser, or owned by an owner other than the developer, until
 1232 the condominium parcel is conveyed to an owner who is not a bulk

CS/HB 1195

2011

1233 assignee.

1234 (3) If a bulk assignee relinquishes control of the board
 1235 of administration as set forth in s. 718.301, the bulk assignee
 1236 must deliver all of those items required by s. 718.301(4).
 1237 However, the bulk assignee is not required to deliver items and
 1238 documents not in the possession of the bulk assignee if some
 1239 items were or should have been in existence before the bulk
 1240 assignee's acquisition of the units ~~during the period during~~
 1241 ~~which the bulk assignee was entitled to elect at least a~~
 1242 ~~majority of the members of the board of administration.~~ In
 1243 conjunction with the acquisition of units ~~condominium parcels~~, a
 1244 bulk assignee shall undertake a good faith effort to obtain the
 1245 documents and materials that must be provided to the association
 1246 pursuant to s. 718.301(4). If the bulk assignee is not able to
 1247 obtain ~~all of~~ such documents and materials, the bulk assignee
 1248 must certify in writing to the association the names or
 1249 descriptions of the documents and materials that were not
 1250 obtainable by the bulk assignee. Delivery of the certificate
 1251 relieves the bulk assignee of responsibility for delivering the
 1252 documents and materials referenced in the certificate as
 1253 otherwise required under ss. 718.112 and 718.301 and this part.
 1254 The responsibility of the bulk assignee for the audit required
 1255 by s. 718.301(4) commences as of the date on which the bulk
 1256 assignee elected or appointed a majority of the members of the
 1257 board of administration.

1258 Section 12. Section 718.706, Florida Statutes, is amended
 1259 to read:

1260 718.706 Specific provisions pertaining to offering of

1261 units by a bulk assignee or bulk buyer.—

1262 (1) Before offering more than seven ~~any~~ units in a single
 1263 condominium for sale or for lease for a term exceeding 5 years,
 1264 a bulk assignee or a bulk buyer must file the following
 1265 documents with the division and provide such documents to a
 1266 prospective purchaser or tenant:

1267 (a) An updated prospectus or offering circular, or a
 1268 supplement to the prospectus or offering circular, filed by the
 1269 original developer prepared in accordance with s. 718.504, which
 1270 must include the form of contract for sale and for lease in
 1271 compliance with s. 718.503(2);

1272 (b) An updated Frequently Asked Questions and Answers
 1273 sheet;

1274 (c) The executed escrow agreement if required under s.
 1275 718.202; and

1276 (d) The financial information required by s. 718.111(13).
 1277 However, if a financial information report did ~~does~~ not exist
 1278 ~~for the fiscal year before the~~ acquisition of title by the bulk
 1279 assignee or bulk buyer, and if ~~or~~ accounting records that cannot
 1280 ~~be obtained in good faith by the bulk assignee or the bulk buyer~~
 1281 ~~which would~~ permit preparation of the required financial
 1282 information report for that period cannot be obtained despite
 1283 good faith efforts by the bulk assignee or the bulk buyer, the
 1284 bulk assignee or bulk buyer is excused from the requirement of
 1285 this paragraph. However, the bulk assignee or bulk buyer must
 1286 include in the purchase contract the following statement in
 1287 conspicuous type:
 1288

1289 ALL OR A PORTION OF THE FINANCIAL INFORMATION REPORT
 1290 REQUIRED UNDER S. 718.111(13) FOR THE TIME PERIOD
 1291 BEFORE THE SELLER'S ACQUISITION OF THE UNIT
 1292 ~~IMMEDIATELY PRECEDING FISCAL YEAR OF THE ASSOCIATION~~
 1293 IS NOT AVAILABLE OR CANNOT BE OBTAINED DESPITE THE
 1294 GOOD FAITH EFFORTS OF ~~CREATED BY THE SELLER DUE TO THE~~
 1295 ~~INSUFFICIENT ACCOUNTING RECORDS OF THE ASSOCIATION.~~

1296
 1297 (2) Before offering more than seven ~~any~~ units in a single
 1298 condominium for sale or for lease for a term exceeding 5 years,
 1299 a bulk assignee or a bulk buyer must file with the division and
 1300 provide to a prospective purchaser or tenant under a lease for a
 1301 term exceeding 5 years a disclosure statement that includes, but
 1302 is not limited to:

1303 (a) A description of any ~~rights~~ of the developer rights
 1304 that developer which have been assigned to the bulk assignee or
 1305 bulk buyer;

1306 (b) The following statement in conspicuous type:

1307
 1308 THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE
 1309 DEVELOPER UNDER S. 718.203(1) OR S. 718.618, AS
 1310 APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION,
 1311 DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF
 1312 OF THE SELLER; and

1313
 1314 (c) If the condominium is a conversion subject to part VI,
 1315 the following statement in conspicuous type:

1316

CS/HB 1195

2011

1317 THE SELLER HAS NO OBLIGATION TO FUND CONVERTER
 1318 RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER S.
 1319 718.618 ON ANY PORTION OF THE CONDOMINIUM PROPERTY
 1320 EXCEPT AS ~~MAY BE~~ EXPRESSLY REQUIRED OF THE SELLER IN
 1321 THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE
 1322 SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO
 1323 ANY DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK
 1324 PERFORMED BY OR ON BEHALF OF THE SELLER.

1325
 1326 (3) A bulk assignee, while ~~it is~~ in control of the board
 1327 of administration of the association, may not authorize, on
 1328 behalf of the association:

1329 (a) The waiver of reserves or the reduction of funding of
 1330 the reserves pursuant to s. 718.112(2)(f)2., unless approved by
 1331 a majority of the voting interests not controlled by the
 1332 developer, bulk assignee, and bulk buyer; or

1333 (b) The use of reserve expenditures for other purposes
 1334 pursuant to s. 718.112(2)(f)3., unless approved by a majority of
 1335 the voting interests not controlled by the developer, bulk
 1336 assignee, and bulk buyer.

1337 (4) A bulk assignee or a bulk buyer must comply with ~~all~~
 1338 ~~the requirements of~~ s. 718.302 regarding any contracts entered
 1339 into by the association during the period the bulk assignee or
 1340 bulk buyer maintains control of the board of administration.
 1341 Unit owners shall be provided ~~afforded~~ all of the rights and ~~the~~
 1342 protections contained in s. 718.302 regarding agreements entered
 1343 into by the association which are under the control of ~~before~~
 1344 ~~unit owners other than~~ the developer, bulk assignee, or bulk

1345 buyer ~~elected a majority of the board of administration.~~

1346 (5) Notwithstanding any other provision of this part, a
 1347 bulk assignee or a bulk buyer is not required to comply with the
 1348 filing or disclosure requirements of subsections (1) and (2) if
 1349 all of the units owned by the bulk assignee or bulk buyer are
 1350 offered and conveyed to a single purchaser in a single
 1351 transaction. ~~A bulk buyer must comply with the requirements~~
 1352 ~~contained in the declaration regarding any transfer of a unit,~~
 1353 ~~including sales, leases, and subleases. A bulk buyer is not~~
 1354 ~~entitled to any exemptions afforded a developer or successor~~
 1355 ~~developer under this chapter regarding the transfer of a unit,~~
 1356 ~~including sales, leases, or subleases.~~

1357 Section 13. Section 718.707, Florida Statutes, is amended
 1358 to read:

1359 718.707 Time limitation for classification as bulk
 1360 assignee or bulk buyer.—A person acquiring condominium parcels
 1361 may not be classified as a bulk assignee or bulk buyer unless
 1362 the condominium parcels were acquired on or after July 1, 2010,
 1363 but before July 1, 2012. The date of such acquisition shall be
 1364 determined by the date of recording ~~of~~ a deed or other
 1365 instrument of conveyance for such parcels in the public records
 1366 of the county in which the condominium is located, or by the
 1367 date of issuing ~~issuance of~~ a certificate of title in a
 1368 foreclosure proceeding with respect to such condominium parcels.

1369 Section 14. Subsections (3), (4), and (10) of section
 1370 719.108, Florida Statutes, are amended to read:

1371 719.108 Rents and assessments; liability; lien and
 1372 priority; interest; collection; cooperative ownership.—

1373 (3) Rents and assessments, and installments on them, not
 1374 paid when due bear interest at the rate provided in the
 1375 cooperative documents from the date due until paid. This rate
 1376 may not exceed the rate allowed by law~~7~~ and, if a rate is not
 1377 provided in the cooperative documents, ~~interest~~ accrues at 18
 1378 percent per annum. If the cooperative documents or bylaws so
 1379 provide, the association may charge an administrative late fee
 1380 in addition to such interest, ~~in an amount~~ not to exceed the
 1381 greater of \$25 or 5 percent of each installment of the
 1382 assessment for each delinquent installment that the payment is
 1383 late. Any payment received by an association must be applied
 1384 first to any interest accrued by the association, then to any
 1385 administrative late fee, then to any costs and reasonable
 1386 attorney's fees incurred in collection, and then to the
 1387 delinquent assessment. The foregoing applies notwithstanding any
 1388 restrictive endorsement, designation, or instruction placed on
 1389 or accompanying a payment. A late fee is not subject to chapter
 1390 687 or s. 719.303 (4) ~~(3)~~.

1391 (4) The association has a lien on each cooperative parcel
 1392 for any unpaid rents and assessments, plus interest, and any
 1393 authorized administrative late fees, ~~and any reasonable costs~~
 1394 ~~for collection services for which the association has contracted~~
 1395 ~~against the unit owner of the cooperative parcel~~. If authorized
 1396 by the cooperative documents, the lien also secures reasonable
 1397 attorney's fees incurred by the association incident to the
 1398 collection of the rents and assessments or enforcement of such
 1399 lien. The lien is effective from and after recording a claim of
 1400 lien in the public records in the county in which the

CS/HB 1195

2011

1401 cooperative parcel is located which states the description of
1402 the cooperative parcel, the name of the unit owner, the amount
1403 due, and the due dates. The lien expires if a claim of lien is
1404 not filed within 1 year after the date the assessment was due,
1405 and the lien does not continue for longer than 1 year after the
1406 claim of lien has been recorded unless, within that time, an
1407 action to enforce the lien is commenced. Except as otherwise
1408 provided in this chapter, a lien may not be filed by the
1409 association against a cooperative parcel until 30 days after the
1410 date on which a notice of intent to file a lien has been
1411 delivered to the owner.

1412 (a) The notice must be sent to the unit owner at the
1413 address of the unit by first-class United States mail and:

1414 1. If the most recent address of the unit owner on the
1415 records of the association is the address of the unit, the
1416 notice must be sent by registered or certified mail, return
1417 receipt requested, to the unit owner at the address of the unit.

1418 2. If the most recent address of the unit owner on the
1419 records of the association is in the United States, but is not
1420 the address of the unit, the notice must be sent by registered
1421 or certified mail, return receipt requested, to the unit owner
1422 at his or her most recent address.

1423 3. If the most recent address of the unit owner on the
1424 records of the association is not in the United States, the
1425 notice must be sent by first-class United States mail to the
1426 unit owner at his or her most recent address.

1427 (b) A notice that is sent pursuant to this subsection is
1428 deemed delivered upon mailing.

CS/HB 1195

2011

1429 (10) If the unit is occupied by a tenant and the unit
1430 owner is delinquent in paying any monetary obligation due to the
1431 association, the association may make a written demand that the
1432 tenant pay rent to the association ~~the future monetary~~
1433 ~~obligations related to the cooperative share to the association~~
1434 and continue to the tenant must make such payments until all
1435 monetary obligations of the unit owner related to the unit have
1436 been paid in full to the association ~~payment. The demand is~~
1437 ~~continuing in nature, and upon demand,~~ The tenant must pay the
1438 monetary obligations to the association until the association
1439 releases the tenant or the tenant discontinues tenancy in the
1440 unit. The association must mail written notice to the unit owner
1441 of the association's demand that the tenant make payments to the
1442 association. The association shall, upon request, provide the
1443 tenant with written receipts for payments made. A tenant ~~who~~
1444 ~~acts in good faith in response to a written demand from an~~
1445 ~~association~~ is immune from any claim by ~~from~~ the unit owner
1446 related to the rent once the association has made written
1447 demand. Any payment received from a tenant by the association
1448 must be applied to the unit owner's oldest delinquent monetary
1449 obligation.

1450 (a) If the tenant paid ~~prepaid~~ rent to the unit owner for
1451 a given rental period before receiving the demand from the
1452 association and provides written evidence of prepaying ~~paying~~
1453 the rent to the association within 14 days after receiving the
1454 demand, the tenant shall receive credit for the prepaid rent for
1455 the applicable period but ~~and~~ must make any subsequent rental
1456 payments to the association to be credited against the monetary

1457 obligations of the unit owner ~~to the association.~~

1458 (b) The tenant is not liable for increases in the amount
 1459 of the regular monetary obligations due unless the tenant was
 1460 notified in writing of the increase at least 10 days before the
 1461 date on which the rent is due. The liability of the tenant may
 1462 not exceed the amount due from the tenant to the tenant's
 1463 landlord. The tenant's landlord shall provide the tenant a
 1464 credit against rents due to the unit owner in the amount of
 1465 moneys paid to the association ~~under this section.~~

1466 (c) The association may issue notices under s. 83.56 and
 1467 may sue for eviction under ss. 83.59-83.625 as if the
 1468 association were a landlord under part II of chapter 83 if the
 1469 tenant fails to pay a required payment. However, the association
 1470 is not otherwise considered a landlord under chapter 83 and
 1471 specifically has no obligations ~~duties~~ under s. 83.51.

1472 (d) The tenant does not, by virtue of payment of monetary
 1473 obligations, have any of the rights of a unit owner to vote in
 1474 any election or to examine the books and records of the
 1475 association.

1476 (e) A court may supersede the effect of this subsection by
 1477 appointing a receiver.

1478 Section 15. Subsection (3) of section 719.303, Florida
 1479 Statutes, is amended, and subsections (4), (5), and (6) are
 1480 added to that section, to read:

1481 719.303 Obligations of owners.—

1482 (3) ~~If the cooperative documents so provide,~~ The
 1483 association may levy reasonable fines ~~against a unit owner~~ for
 1484 failure of the unit owner or the unit's occupant, ~~his or her~~

1485 licensee, or invitee ~~or the unit's occupant~~ to comply with any
 1486 provision of the cooperative documents or reasonable rules of
 1487 the association. A fine may not ~~No fine shall~~ become a lien
 1488 against a unit. ~~No fine shall exceed \$100 per violation.~~
 1489 ~~However,~~ A fine may be levied on the basis of each day of a
 1490 continuing violation, with a single notice and opportunity for
 1491 hearing. However, the fine may not exceed \$100 per violation, or
 1492 \$1,000 ~~provided that no such fine shall~~ in the aggregate ~~exceed~~
 1493 ~~\$1,000.~~

1494 (a) An association may suspend, for a reasonable period of
 1495 time, the right of a unit owner, or a unit owner's tenant,
 1496 guest, or invitee, to use the common elements, common
 1497 facilities, or any other association property for failure to
 1498 comply with any provision of the cooperative documents or
 1499 reasonable rules of the association.

1500 (b) A ~~No~~ fine or suspension may not be imposed ~~levied~~
 1501 except after giving reasonable notice and opportunity for a
 1502 hearing to the unit owner and, if applicable, the unit's ~~his or~~
 1503 ~~her~~ licensee or invitee. The hearing must ~~shall~~ be held before a
 1504 committee of other unit owners. If the committee does not agree
 1505 with the fine or suspension, it may ~~shall~~ not be imposed ~~levied~~.
 1506 ~~This subsection does not apply to unoccupied units.~~

1507 (4) If a unit owner is more than 90 days delinquent in
 1508 paying a monetary obligation due to the association, the
 1509 association may suspend the right of the unit owner or the
 1510 unit's occupant, licensee, or invitee to use common elements,
 1511 common facilities, or any other association property until the
 1512 monetary obligation is paid in full. This subsection does not

CS/HB 1195

2011

1513 apply to limited common elements intended to be used only by
1514 that unit, common elements needed to access the unit, utility
1515 services provided to the unit, parking spaces, or elevators. The
1516 notice and hearing requirements under subsection (3) do not
1517 apply to suspensions imposed under this subsection.

1518 (5) An association may suspend the voting rights of a
1519 member due to nonpayment of any monetary obligation due to the
1520 association which is more than 90 days delinquent. The
1521 suspension ends upon full payment of all obligations currently
1522 due or overdue the association. A voting interest or consent
1523 right allocated to a unit which has been suspended by the
1524 association may not be exercised or considered for any purpose,
1525 including, but not limited to, a quorum, an election, or the
1526 votes required to approve an action under this chapter or
1527 pursuant to the cooperative documents. The notice and hearing
1528 requirements under subsection (3) do not apply to a suspension
1529 imposed under this subsection.

1530 (6) All suspensions imposed pursuant to subsection (4) or
1531 subsection (5) must be approved at a properly noticed board
1532 meeting. Upon approval, the association must notify the unit
1533 owner and, if applicable, the unit's occupant, licensee, or
1534 invitee by mail or hand delivery.

1535 Section 16. Subsection (4) of section 720.301, Florida
1536 Statutes, is amended to read:

1537 720.301 Definitions.—As used in this chapter, the term:

1538 (4) "Declaration of covenants," or "declaration," means a
1539 recorded written instrument or instruments in the nature of
1540 covenants running with the land which subject ~~subjects~~ the land

1541 comprising the community to the jurisdiction and control of an
 1542 association or associations in which the owners of the parcels,
 1543 or their association representatives, must be members.

1544 Section 17. Paragraph (c) of subsection (5) of section
 1545 720.303, Florida Statutes, is amended to read:

1546 720.303 Association powers and duties; meetings of board;
 1547 official records; budgets; financial reporting; association
 1548 funds; recalls.—

1549 (5) INSPECTION AND COPYING OF RECORDS.—The official
 1550 records shall be maintained within the state and must be open to
 1551 inspection and available for photocopying by members or their
 1552 authorized agents at reasonable times and places within 10
 1553 business days after receipt of a written request for access.
 1554 This subsection may be complied with by having a copy of the
 1555 official records available for inspection or copying in the
 1556 community. If the association has a photocopy machine available
 1557 where the records are maintained, it must provide parcel owners
 1558 with copies on request during the inspection if the entire
 1559 request is limited to no more than 25 pages.

1560 (c) The association may adopt reasonable written rules
 1561 governing the frequency, time, location, notice, records to be
 1562 inspected, and manner of inspections, but may not require a
 1563 parcel owner to demonstrate any proper purpose for the
 1564 inspection, state any reason for the inspection, or limit a
 1565 parcel owner's right to inspect records to less than one 8-hour
 1566 business day per month. The association may impose fees to cover
 1567 the costs of providing copies of the official records,
 1568 including, without limitation, the costs of copying. The

CS/HB 1195

2011

1569 association may charge up to 50 cents per page for copies made
1570 on the association's photocopier. If the association does not
1571 have a photocopy machine available where the records are kept,
1572 or if the records requested to be copied exceed 25 pages in
1573 length, the association may have copies made by an outside
1574 vendor or association management company personnel and may
1575 charge the actual cost of copying, including any reasonable
1576 costs involving personnel fees and charges at an hourly rate for
1577 vendor or employee time to cover administrative costs to the
1578 vendor or association. The association shall maintain an
1579 adequate number of copies of the recorded governing documents,
1580 to ensure their availability to members and prospective members.
1581 Notwithstanding this paragraph, the following records are not
1582 accessible to members or parcel owners:

1583 1. Any record protected by the lawyer-client privilege as
1584 described in s. 90.502 and any record protected by the work-
1585 product privilege, including, but not limited to, a ~~any~~ record
1586 prepared by an association attorney or prepared at the
1587 attorney's express direction which reflects a mental impression,
1588 conclusion, litigation strategy, or legal theory of the attorney
1589 or the association and which was prepared exclusively for civil
1590 or criminal litigation or for adversarial administrative
1591 proceedings or which was prepared in anticipation of such
1592 ~~imminent civil or criminal~~ litigation or ~~imminent adversarial~~
1593 ~~administrative~~ proceedings until the conclusion of the
1594 litigation or ~~administrative~~ proceedings.

1595 2. Information obtained by an association in connection
1596 with the approval of the lease, sale, or other transfer of a

1597 parcel.

1598 3. Personnel records of the association's employees,
1599 including, but not limited to, disciplinary, payroll, health,
1600 and insurance records. For purposes of this subparagraph, the
1601 term "personnel records" does not include written employment
1602 agreements with an association employee or budgetary or
1603 financial records that indicate the compensation paid to an
1604 association employee.

1605 4. Medical records of parcel owners or community
1606 residents.

1607 5. Social security numbers, driver's license numbers,
1608 credit card numbers, electronic mailing addresses, telephone
1609 numbers, facsimile numbers, emergency contact information, any
1610 addresses for a parcel owner other than as provided for
1611 association notice requirements, and other personal identifying
1612 information of any person, excluding the person's name, parcel
1613 designation, mailing address, and property address. However, an
1614 owner may consent in writing to the disclosure of protected
1615 information described in this subparagraph. The association is
1616 not liable for the disclosure of information that is protected
1617 under this subparagraph if the information is included in an
1618 official record of the association and is voluntarily provided
1619 by an owner and not requested by the association.

1620 6. Any electronic security measure that is used by the
1621 association to safeguard data, including passwords.

1622 7. The software and operating system used by the
1623 association which allows the manipulation of data, even if the
1624 owner owns a copy of the same software used by the association.

1625 The data is part of the official records of the association.

1626 Section 18. Section 720.305, Florida Statutes, is amended
1627 to read:

1628 720.305 Obligations of members; remedies at law or in
1629 equity; levy of fines and suspension of use rights.—

1630 (1) Each member and the member's tenants, guests, and
1631 invitees, and each association, are governed by, and must comply
1632 with, this chapter, the governing documents of the community,
1633 and the rules of the association. Actions at law or in equity,
1634 or both, to redress alleged failure or refusal to comply with
1635 these provisions may be brought by the association or by any
1636 member against:

1637 (a) The association;

1638 (b) A member;

1639 (c) Any director or officer of an association who
1640 willfully and knowingly fails to comply with these provisions;
1641 and

1642 (d) Any tenants, guests, or invitees occupying a parcel or
1643 using the common areas.

1644

1645 The prevailing party in any such litigation is entitled to
1646 recover reasonable attorney's fees and costs. A member
1647 prevailing in an action between the association and the member
1648 under this section, in addition to recovering his or her
1649 reasonable attorney's fees, may recover additional amounts as
1650 determined by the court to be necessary to reimburse the member
1651 for his or her share of assessments levied by the association to
1652 fund its expenses of the litigation. This relief does not

1653 | exclude other remedies provided by law. This section does not
 1654 | deprive any person of any other available right or remedy.

1655 | (2) The association ~~If a member is delinquent for more~~
 1656 | ~~than 90 days in paying a monetary obligation due the~~
 1657 | ~~association, an association may suspend, until such monetary~~
 1658 | ~~obligation is paid, the rights of a member or a member's~~
 1659 | ~~tenants, guests, or invitees, or both, to use common areas and~~
 1660 | ~~facilities and~~ may levy reasonable fines of up to \$100 per
 1661 | violation, against any member or any member's tenant, guest, or
 1662 | invitee for the failure of the owner of the parcel or its
 1663 | occupant, licensee, or invitee to comply with any provision of
 1664 | the declaration, the association bylaws, or reasonable rules of
 1665 | the association. A fine may be levied for each day of a
 1666 | continuing violation, with a single notice and opportunity for
 1667 | hearing, except that the a fine may not exceed \$1,000 in the
 1668 | aggregate unless otherwise provided in the governing documents.
 1669 | A fine of less than \$1,000 may not become a lien against a
 1670 | parcel. In any action to recover a fine, the prevailing party is
 1671 | entitled to ~~collect its~~ reasonable attorney's fees and costs
 1672 | from the nonprevailing party as determined by the court.

1673 | (a) An association may suspend, for a reasonable period of
 1674 | time, the right of a member, or a member's tenant, guest, or
 1675 | invitee, to use common areas and facilities for the failure of
 1676 | the owner of the parcel or its occupant, licensee, or invitee to
 1677 | comply with any provision of the declaration, the association
 1678 | bylaws, or reasonable rules of the association. ~~The provisions~~
 1679 | ~~regarding the suspension of use rights do not apply to the~~
 1680 | ~~portion of common areas that must be used to provide access to~~

CS/HB 1195

2011

1681 ~~the parcel or utility services provided to the parcel.~~

1682 (b)~~(a)~~ A fine or suspension may not be imposed without at
 1683 least 14 days' notice to the person sought to be fined or
 1684 suspended and an opportunity for a hearing before a committee of
 1685 at least three members appointed by the board who are not
 1686 officers, directors, or employees of the association, or the
 1687 spouse, parent, child, brother, or sister of an officer,
 1688 director, or employee. If the committee, by majority vote, does
 1689 not approve a proposed fine or suspension, it may not be
 1690 imposed. If the association imposes a fine or suspension, the
 1691 association must provide written notice of such fine or
 1692 suspension by mail or hand delivery to the parcel owner and, if
 1693 applicable, to any tenant, licensee, or invitee of the parcel
 1694 owner.

1695 (3) If a member is more than 90 days delinquent in paying
 1696 a monetary obligation due to the association, the association
 1697 may suspend the rights of the member, or the member's tenant,
 1698 guest, or invitee, to use common areas and facilities until the
 1699 monetary obligation is paid in full. This subsection does not
 1700 apply to that portion of common areas used to provide access or
 1701 utility services to the parcel.

1702 ~~(b)~~ Suspension does ~~of common-area-use rights do~~ not
 1703 impair the right of an owner or tenant of a parcel to have
 1704 vehicular and pedestrian ingress to and egress from the parcel,
 1705 including, but not limited to, the right to park. The notice and
 1706 hearing requirements under subsection (2) do not apply to a
 1707 suspension imposed under this subsection.

1708 (4)~~(3)~~ ~~If the governing documents so provide,~~ An

CS/HB 1195

2011

1709 association may suspend the voting rights of a member for the
1710 nonpayment of any monetary obligation that is more than regular
1711 ~~annual assessments that are delinquent in excess of~~ 90 days
1712 delinquent. A voting interest or consent right allocated to a
1713 parcel which has been suspended by the association may not be
1714 exercised or considered for any purpose, including, but not
1715 limited to, a quorum, an election, or the votes required to
1716 approve an action under this chapter or pursuant to the
1717 governing documents. The notice and hearing requirements under
1718 subsection (3) do not apply to a suspension imposed under this
1719 subsection. The suspension ends upon full payment of all
1720 obligations currently due or overdue to the association.

1721 (5) All suspensions imposed pursuant to subsection (3) or
1722 subsection (4) must be approved at a properly noticed board
1723 meeting. Upon approval, the association must notify the parcel
1724 owner and, if applicable, the parcel's occupant, licensee, or
1725 invitee by mail or hand delivery.

1726 Section 19. Subsection (9) of section 720.306, Florida
1727 Statutes, is amended to read:

1728 720.306 Meetings of members; voting and election
1729 procedures; amendments.—

1730 (9) (a) ELECTIONS AND BOARD VACANCIES.— Elections of
1731 directors must be conducted in accordance with the procedures
1732 set forth in the governing documents of the association. All
1733 members of the association are eligible to serve on the board of
1734 directors, and a member may nominate himself or herself as a
1735 candidate for the board at a meeting where the election is to be
1736 held or, if the election process allows voting by absentee

1737 | ballot, in advance of the balloting. Except as otherwise
 1738 | provided in the governing documents, boards of directors must be
 1739 | elected by a plurality of the votes cast by eligible voters.

1740 | (b) A person who is delinquent in the payment of any fee,
 1741 | fine, or other monetary obligation to the association for more
 1742 | than 90 days is not eligible for board membership. A person who
 1743 | has been convicted of any felony in this state or in a United
 1744 | States District or Territorial Court, or has been convicted of
 1745 | any offense in another jurisdiction which would be considered a
 1746 | felony if committed in this state, is not eligible for board
 1747 | membership unless such felon's civil rights have been restored
 1748 | for at least 5 years as of the date on which such person seeks
 1749 | election to the board. The validity of any action by the board
 1750 | is not affected if it is later determined that a member of the
 1751 | board is ineligible for board membership.

1752 | (c) Any election dispute between a member and an
 1753 | association must be submitted to mandatory binding arbitration
 1754 | with the division. Such proceedings must be conducted in the
 1755 | manner provided by s. 718.1255 and the procedural rules adopted
 1756 | by the division. Unless otherwise provided in the bylaws, any
 1757 | vacancy occurring on the board before the expiration of a term
 1758 | may be filled by an affirmative vote of the majority of the
 1759 | remaining directors, even if the remaining directors constitute
 1760 | less than a quorum, or by the sole remaining director. In the
 1761 | alternative, a board may hold an election to fill the vacancy,
 1762 | in which case the election procedures must conform to the
 1763 | requirements of the governing documents. Unless otherwise
 1764 | provided in the bylaws, a board member appointed or elected

1765 under this section is appointed for the unexpired term of the
 1766 seat being filled. Filling vacancies created by recall is
 1767 governed by s. 720.303(10) and rules adopted by the division.

1768 Section 20. Paragraph (a) of subsection (1) and
 1769 subsections (3) and (8) of section 720.3085, Florida Statutes,
 1770 are amended to read:

1771 720.3085 Payment for assessments; lien claims.—

1772 (1) When authorized by the governing documents, the
 1773 association has a lien on each parcel to secure the payment of
 1774 assessments and other amounts provided for by this section.
 1775 Except as otherwise set forth in this section, the lien is
 1776 effective from and shall relate back to the date on which the
 1777 original declaration of the community was recorded. However, as
 1778 to first mortgages of record, the lien is effective from and
 1779 after recording of a claim of lien in the public records of the
 1780 county in which the parcel is located. This subsection does not
 1781 bestow upon any lien, mortgage, or certified judgment of record
 1782 on July 1, 2008, including the lien for unpaid assessments
 1783 created in this section, a priority that, by law, the lien,
 1784 mortgage, or judgment did not have before July 1, 2008.

1785 (a) To be valid, a claim of lien must state the
 1786 description of the parcel, the name of the record owner, the
 1787 name and address of the association, the assessment amount due,
 1788 and the due date. The claim of lien secures ~~shall secure~~ all
 1789 unpaid assessments that are due and that may accrue subsequent
 1790 to the recording of the claim of lien and before entry of a
 1791 certificate of title, as well as interest, late charges, and
 1792 reasonable costs and attorney's fees incurred by the association

1793 | incident to the collection process. The person making ~~the~~
 1794 | payment is entitled to a satisfaction of the lien upon payment
 1795 | in full.

1796 | (3) Assessments and installments on assessments that are
 1797 | not paid when due bear interest from the due date until paid at
 1798 | the rate provided in the declaration of covenants or the bylaws
 1799 | of the association, which rate may not exceed the rate allowed
 1800 | by law. If no rate is provided in the declaration or bylaws,
 1801 | interest accrues at the rate of 18 percent per year.

1802 | (a) If the declaration or bylaws so provide, the
 1803 | association may also charge an administrative late fee ~~in an~~
 1804 | ~~amount~~ not to exceed the greater of \$25 or 5 percent of the
 1805 | amount of each installment that is paid past the due date.

1806 | (b) Any payment received by an association and accepted
 1807 | shall be applied first to any interest accrued, then to any
 1808 | administrative late fee, then to any costs and reasonable
 1809 | attorney's fees incurred in collection, and then to the
 1810 | delinquent assessment. This paragraph applies notwithstanding
 1811 | any restrictive endorsement, designation, or instruction placed
 1812 | on or accompanying a payment. A late fee is not subject to the
 1813 | provisions of chapter 687 and is not a fine.

1814 | (8) If the parcel is occupied by a tenant and the parcel
 1815 | owner is delinquent in paying any monetary obligation due to the
 1816 | association, the association may demand that the tenant pay rent
 1817 | to the association and continue to make such payments until all
 1818 | the monetary obligations of the parcel owner related to the
 1819 | parcel have been paid in full and the future monetary
 1820 | obligations related to the parcel. ~~The demand is continuing in~~

1821 ~~nature, and upon demand, the tenant must continue to pay the~~
 1822 ~~monetary obligations until~~ the association releases the tenant
 1823 or until the tenant discontinues tenancy in the parcel. A tenant
 1824 ~~who acts in good faith in response to a written demand from an~~
 1825 ~~association~~ is immune from any claim by ~~from~~ the parcel owner
 1826 related to the rent once the association has made written
 1827 demand. Any payment received from a tenant by the association
 1828 must be applied to the parcel owner's oldest delinquent monetary
 1829 obligation.

1830 (a) If the tenant paid ~~prepaid~~ rent to the parcel owner
 1831 for a given rental period before receiving the demand from the
 1832 association and provides written evidence of prepaying ~~paying~~
 1833 the rent to the association within 14 days after receiving the
 1834 demand, the tenant shall receive credit for the prepaid rent for
 1835 the applicable period but ~~and~~ must make any subsequent rental
 1836 payments to the association to be credited against the monetary
 1837 obligations of the parcel owner to the association. The
 1838 association shall, upon request, provide the tenant with written
 1839 receipts for payments made. The association shall mail written
 1840 notice to the parcel owner of the association's demand that the
 1841 tenant pay monetary obligations to the association.

1842 (b) The tenant is not liable for increases in the amount
 1843 of the monetary obligations due unless the tenant was notified
 1844 in writing of the increase at least 10 days before the date on
 1845 which the rent is due. The liability of the tenant may not
 1846 exceed the amount due from the tenant to the tenant's landlord.
 1847 The tenant shall be given a credit against rents due to the
 1848 parcel owner in the amount of assessments paid to the

CS/HB 1195

2011

1849 association.

1850 (c) The association may issue notices under s. 83.56 and
 1851 may sue for eviction under ss. 83.59-83.625 as if the
 1852 association were a landlord under part II of chapter 83 if the
 1853 tenant fails to pay a monetary obligation. However, the
 1854 association is not otherwise considered a landlord under chapter
 1855 83 and specifically has no obligations ~~duties~~ under s. 83.51.

1856 (d) The tenant does not, by virtue of payment of monetary
 1857 obligations, have any of the rights of a parcel owner to vote in
 1858 any election or to examine the books and records of the
 1859 association.

1860 (e) A court may supersede the effect of this subsection by
 1861 appointing a receiver.

1862 Section 21. Section 720.309, Florida Statutes, is amended
 1863 to read:

1864 720.309 Agreements entered into by the association.-

1865 (1) Any grant or reservation made by any document, and any
 1866 contract that has ~~with~~ a term greater than ~~in excess of~~ 10
 1867 years, that is made by an association before control of the
 1868 association is turned over to the members other than the
 1869 developer, and that provides ~~which provide~~ for the operation,
 1870 maintenance, or management of the association or common areas,
 1871 must be fair and reasonable.

1872 (2) If the governing documents provide for the cost of
 1873 communications services as defined in s. 202.11, information
 1874 services or Internet services obtained pursuant to a bulk
 1875 contract shall be deemed an operating expense of the
 1876 association. If the governing documents do not provide for such

1877 services, the board may contract for the services, and the cost
 1878 shall be deemed an operating expense of the association but must
 1879 be allocated on a per-parcel basis rather than a percentage
 1880 basis, notwithstanding that the governing documents provide for
 1881 other than an equal sharing of operating expenses. Any contract
 1882 entered into before July 1, 2011, in which the cost of the
 1883 service is not equally divided among all parcel owners may be
 1884 changed by a majority of the voting interests present at a
 1885 regular or special meeting of the association in order to
 1886 allocate the cost equally among all parcels.

1887 (a) Any contract entered into by the board may be canceled
 1888 by a majority of the voting interests present at the next
 1889 regular or special meeting of the association, whichever occurs
 1890 first. Any member may make a motion to cancel such contract, but
 1891 if no motion is made or if such motion fails to obtain the
 1892 required vote, the contract shall be deemed ratified for the
 1893 term expressed therein.

1894 (b) Any contract entered into by the board must provide,
 1895 and shall be deemed to provide if not expressly set forth
 1896 therein, that a hearing-impaired or legally blind parcel owner
 1897 who does not occupy the parcel with a non-hearing-impaired or
 1898 sighted person, or a parcel owner who receives supplemental
 1899 security income under Title XVI of the Social Security Act or
 1900 food assistance as administered by the Department of Children
 1901 and Family Services pursuant to s. 414.31, may discontinue the
 1902 service without incurring disconnect fees, penalties, or
 1903 subsequent service charges, and may not be required to pay any
 1904 operating expenses charge related to such service for those

CS/HB 1195

2011

1905 parcels. If fewer than all parcel owners share the expenses of
1906 the communications services, information services, or Internet
1907 services, the expense must be shared by all participating parcel
1908 owners. The association may use the provisions of s. 720.3085 to
1909 enforce payment by the parcel owners receiving such services.

1910 (c) A resident of any parcel, whether a tenant or parcel
1911 owner, may not be denied access to available franchised,
1912 licensed, or certificated cable or video service providers if
1913 the resident pays the provider directly for services. A resident
1914 or a cable or video service provider may not be required to pay
1915 anything of value in order to obtain or provide such service
1916 except for the charges normally paid for like services by
1917 residents of single-family homes located outside the community
1918 but within the same franchised, licensed, or certificated area,
1919 and except for installation charges agreed to between the
1920 resident and the service provider.

1921 Section 22. This act shall take effect July 1, 2011.