

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1339 Residential Properties  
**SPONSOR(S):** Civil Justice Subcommittee; Moraitis  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1618

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	7 Y, 5 N, As CS	Cary	Bond
2) Business & Professional Regulation Subcommittee	9 Y, 4 N	Collins	Luczynski
3) Judiciary Committee			

### SUMMARY ANALYSIS

Florida law recognizes the right of communities to create condominiums, cooperatives, and homeowners' associations. Members of these organizations elect associations or boards to act in the benefit of the organizations they serve. Individuals own units or parcels within a broader community, while the organization owns common areas that serve each member of the organization. Members in condominium, cooperative, and homeowners' associations are required to pay periodic assessments to fund the operations of their association.

In general, the purchaser of a unit is jointly and severally liable with the previous owner for all assessments that were due at the time of the purchase, regardless of the method of purchase. Current law requires the first mortgagee in a condominium or homeowners association to pay unpaid assessments due at the time of the foreclosure sale, but limits the amount that is payable. This bill clarifies that the first mortgagee has no liability for any interest, administrative late fee, reasonable cost or attorney fee, or any other fee, cost or expense that came due prior to the lender's acquisition of title. The bill also expands a lender's requirement to pay unpaid assessments to cooperative associations, but limits the amount that is payable.

Abandoned condominium units pose a problem for the condominium as a whole, as it may deteriorate and affect other units or common areas, or even the structure of the building. This bill provides a condominium board the authority to enter an abandoned unit for the purpose of maintaining or repairing it after notifying or attempting to notify the owner of its intention. The board can then charge costs to the owner and place a lien on the unit.

The bill also allows a homeowners' association to print and distribute a directory that includes association members' names, addresses, and telephone numbers. However, a resident may request in writing to have his or her phone number excluded from the directory.

This bill does not appear to have a fiscal impact on state or local governments.

This bill provides an effective date of July 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

The Florida Statutes recognize the right of communities to create condominiums, cooperatives, and homeowners' associations.<sup>1</sup> Members of these organizations elect associations or boards to act in the benefit of the organizations they serve. Individuals own units or parcels within a broader community, while the organization owns common areas that serve each member of the organization.

#### *Condominiums*

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., which is comprised of units which are individually owned, but have an undivided share of access to common facilities.<sup>2</sup> A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.<sup>3</sup> A declaration is similar to a constitution in that it governs the relationships among condominium unit owners and the condominium association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.<sup>4</sup> Further, it delineates condominium association bylaws, which governs the administration of the association, including, but not limited to, quorum, voting rights, and election and removal of board members.<sup>5</sup>

All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners which operates or maintains real property in which unit owners have use rights.<sup>6</sup> The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration."<sup>7</sup>

#### *Cooperatives*

A "cooperative" is a form of ownership of real property created pursuant to ch. 719, F.S., wherein legal title is vested in a corporation or other business entity, and the property's residents own shares of the company, reflecting their equity in the real estate.<sup>8</sup>

Like condominiums, cooperatives are created by cooperative documents and include articles of incorporation of the association, bylaws, a ground lease or any other underlying lease, a document evidencing a unit owner's membership or share in the association, and the document recognizing a unit owner's title or right of possession to his or her unit.<sup>9</sup> Cooperatives are administered in accordance with these bylaws or other cooperative documents, and are run by a board of administration.

#### *Homeowners' Associations*

A "homeowners' association" is defined as a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.<sup>10</sup> Unless specifically stated to the

---

<sup>1</sup> Condominiums, cooperatives, and homeowners' associations are governed by chs. 718, 719, and 720, F.S., respectively.

<sup>2</sup> Section 718.103(11), F.S.

<sup>3</sup> Section 718.104(2), F.S.

<sup>4</sup> Section 718.104(5), F.S.

<sup>5</sup> Section 718.112, F.S.

<sup>6</sup> Section 718.103(2), F.S.

<sup>7</sup> Section 718.103(4), F.S.

<sup>8</sup> Section 719.103(12), F.S.

<sup>9</sup> Section 719.103(13), F.S.

<sup>10</sup> Section 720.301(9), F.S.

contrary, homeowners' associations are also governed by ch. 617, F.S., relating to not-for-profit corporations.<sup>11</sup>

Similar to condominiums and cooperatives, homeowners' associations are administered by an elected board of directors.<sup>12</sup> The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include the recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to those documents.<sup>13</sup>

### **Liability for Unpaid Assessments**

Owners of units or parcels in condominiums, cooperatives, and homeowners' associations are required to pay periodic assessments to fund the operations of the association.<sup>14</sup> A common problem facing associations is delinquent owners. Typically, an owner who stops paying the mortgage, leading to foreclosure, also will stop paying assessments. In general, an association is a junior creditor subordinate to a first mortgage,<sup>15</sup> and thus receives nothing towards unpaid assessments due before the foreclosure sale. In 1992, the Legislature created a 13-member Foreclosure Study Commission. Among its recommendations was that mortgage lenders should be partially responsible at foreclosure for unpaid condominium assessments. The Commission found:

[E]quity demands that mortgagees should assume some liability for unpaid assessments after there has been a default in the mortgage. Such liability, however, should be limited and predictable.<sup>16</sup>

Originally the liability for unpaid common expenses and regular periodic assessments only applied to condominiums and was 6 months or 1% of the original mortgage debt. In subsequent years the liability for condominiums was increased and was expanded to homeowners associations. Currently, only 10 states require a foreclosing lender to pay anything towards past due assessments at foreclosure, the remaining states still provide that the association receives nothing.

Current law provides that the purchaser of a unit is jointly and severally liable with the previous owner for all assessments that were due at the time of the purchase, regardless of the method of purchase.<sup>17</sup> However, in a condominium and a homeowners association, the liability of a first mortgagee or its successors or assignees who acquire title to a unit by foreclosure or deed in lieu of foreclosure is limited to the lesser of:

- Unpaid common expenses and regular periodic assessments that accrued within the previous twelve months; or
- One percent of the original mortgage debt.<sup>18</sup>

The current statutory language does not have a provision specifying that a first mortgagee has liability for interest, late fees, or reasonable costs or attorney fees that came due before its acquisition of title.

This liability for assessments only attaches if the association was named as a defendant in the foreclosure action.<sup>19</sup> There is no similar law currently for cooperatives; thus, in a cooperative the lender takes title without any duty to pay past due assessments.

---

<sup>11</sup> Section 720.302(5), F.S.

<sup>12</sup> See ss. 720.303 and 720.307, F.S.

<sup>13</sup> See ss. 720.301 and 720.303, F.S.

<sup>14</sup> See ss. 718.116, 719.104(5), and 720.308, F.S.

<sup>15</sup> Section 718.116(5)(a), F.S.

<sup>16</sup> Final Report of the Foreclosure Study Commission, January 1992, at page 29. On file with the State Library of Florida at F346.43645.

<sup>17</sup> See ss. 718.116(1)(a), 719.108(1), and 720.3085(2)(b), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

It is possible that this limit for first mortgage holders conflicts with other parts of association laws. One may assert that associations are due more than the 12 months or 1% by pointing to the law that says that in a lien collection case an association may additionally charge all collection costs incurred trying to collect against the former owner.<sup>20</sup>

The bill resolves the perceived conflict and amends association law regarding liability for unpaid assessments. The bill amends ss. 718.116(1), 719.108(1), and 720.3085(2), F.S., to provide that a purchaser is also jointly and severally liable with the previous owner for late fees, interest, costs, and reasonable attorney fees incurred by the association in an attempt to collect, in addition to the unpaid assessments. The bill also makes cooperative law consistent with condominium and homeowners' association law with respect to the limitation on liability to the first mortgagee discussed above.

Further, the bill provides that the first mortgagee may also be liable to the association for unpaid assessments if the foreclosure is due to unpaid interest, late fees, and reasonable costs and attorney fees incurred in the collection process that is owed by the previous owner. However, the bill provides that the first mortgagee is not liable for any interest, administrative late fee, and reasonable cost or attorney fee that came due prior to its acquisition of title, and the first mortgagee is still only held liable in total for the lesser of:

- Unpaid common expenses and regular periodic assessments that accrued within the previous twelve months; or
- One percent of the original mortgage debt.

#### Access to Condominium Unit

Current law grants a condominium association the irrevocable right of access to each unit during reasonable hours to maintain, repair, or replace any common elements or any portion of a unit to be maintained by the association pursuant to the declaration. The association also may access the unit to prevent damage to the common elements or a unit.<sup>21</sup>

The bill amends s. 718.111(5), F.S., to strengthen the association's power to access a unit, regardless of whether the association's governing documents provide the authority to do so, if the unit is deemed to be abandoned. The unit is presumed to be abandoned under two different circumstances:

- The unit is under foreclosure and it appears that no tenant has lived in the unit for at least 4 consecutive weeks without written notice to the association; or
- It appears that no tenant has lived in the unit for at least 2 consecutive months without written notice to the association and the association is unable to contact the owner after a reasonable inquiry.

The association may enter the unit for any of the following reasons:

- To inspect the unit and adjoining common elements;
- To make repairs to the unit or common elements serving the unit;
- To turn on the power for the unit; or
- To otherwise maintain, preserve, or protect the unit and adjoining common elements.

Except in an emergency situation, the association must provide notice to the unit owner and wait 48 hours after delivery of the notice to enter the premises. The association may charge the unit owner for any work performed and place a lien on the unit to collect the expenses.

The bill provides the association the authority to petition a court to appoint a receiver to rent an abandoned unit for the benefit of the association. Rent collected by the association may be applied to the association's costs and expenses, including the costs of the receivership, attorney fees, and other expenses.

---

<sup>20</sup> Section 718.116(6)(a), F.S.

<sup>21</sup> Section 718.111(5), F.S.

## Homeowners' Association Directory

Currently, Florida homeowners' association does not allow a homeowners' association to print a directory of parcel owners, similar to a white pages book for the association, unless an owner specifically consents in writing.

The bill amends s. 720.303(5), F.S., to allow a homeowners' association to print such a directory and distribute it to parcel owners. The bill allows an owner to have his or her phone number excluded from the directory by providing a written request to the association.

### B. SECTION DIRECTORY:

**Section 1:** amends s. 718.111, F.S., relating to the right of access to units.

**Section 2:** amends s. 718.116, F.S., relating to assessments, liability, lien and priority, interest, and collection.

**Section 3:** amends s. 719.108, F.S., relating to rents and assessments, liability, lien and priority, interest, collection, and cooperative ownership.

**Section 4:** amends s. 720.303, F.S., relating to association powers and duties, meetings of board, official records, budgets, financial reporting, association funds, and recalls.

**Section 5:** amends s. 720.3085, F.S., relating to payment for assessments and lien claims.

**Section 6:** provides an effective date of July 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

### D. FISCAL COMMENTS:

The bill appears to have an economic impact on the private sector that cannot be quantified. Mortgage lenders will have more certainty in how much they owe to associations, but face higher costs to foreclose against cooperative associations.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### *Receivership Provision- "Trigger" Mechanisms*

The bill provides the association with the ability to enter an abandoned unit to make routine repairs and upgrades in order to preserve the condition of the unit. As it relates to the specific provision, a unit is presumed to be abandoned if:

- The unit is subject to a foreclosure action and no tenant appears to have resided in the unit for at least 4 continuous weeks without written notice to the association; or
- No tenant appears to have resided in the unit for 2 consecutive months without written notice to the association, and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry.

While sub-subparagraph (b)1.a. (lines 39-41) provides a "trigger" mechanism wherein the unit cannot be deemed abandoned unless it is subject to a foreclosure action, sub-subparagraph (b)1.b. (lines 42-45) has no such trigger. As a result, a unit owner who is not otherwise delinquent in paying monies owed to the association who does not reside in the unit for more than two months and who is unable to be contacted may have his or her unit deemed to be abandoned. In fact, the unit may be owned as a vacation or partial-year residence, wherein the unit owner does not reside at the unit for more than several weeks to several months out of the year.

It would be helpful to provide a "trigger" mechanism in sub-subparagraph (b)1.b., as is provided in sub-subparagraph (b)1.a. For example, a "trigger" mechanism may be that the unit owner is delinquent in paying monies owed to the association or that the unit is subject to a foreclosure action.

##### *Receivership Provision- Definition of "Tenant"*

As discussed above, the bill provides the association with the ability to enter an abandoned unit to make routine repairs and upgrades in order to preserve the condition of the unit. The crux of the receivership provision is that no tenant appears to have resided in the unit for a specified period of time.

The definition of "tenant" may be construed quite broadly, and may possibly include unit residents who do not lawfully occupy the unit, such as squatters. As such, it would be helpful to clarify that no unit owner or legal occupant of the unit appears to have resided in the unit for a specified period of time.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 18, 2013, the Civil Justice Subcommittee adopted five amendments and reported the bill favorably as a committee substitute. The first amendment makes technical changes to the bill, changing the word “adjoining” to “appurtenant” and “delivered” to “sent” to use more precise language. The second amendment removes collection costs from the list of first mortgagee liabilities, with respect to condominiums. The third amendment removes collection fees, costs, and expenses from the list of first mortgagee liabilities, with respect to cooperatives. The fourth amendment allows a homeowners’ association to print and distribute member directories and allows an owner to keep his or her telephone number unlisted. The fifth amendment removes collection fees, costs, and expenses from the list of first mortgagee liabilities, with respect to homeowners’ associations. The three amendments relating to collection costs standardize first mortgagee liabilities within chs. 718, 719, and 720, F.S. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.