

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 798

INTRODUCER: Senator Ring

SUBJECT: Real and Personal Property

DATE: February 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	AP	_____

I. Summary:

SB 798 relates to the operation of condominium associations, cooperative associations, and homeowners' associations.

In regards to homeowners' associations, the bill clarifies the notice requirements for the preservation of association covenants and restrictions under the Marketable Record Title Act.

In regards to the condominium associations, the bill:

- Provides that an amendment to an association's governing documents that prohibits unit owners from renting their units, that alters the duration of the rental term, specifies or limits the number of times unit owners are entitled to rent their units during a specified period does not apply to unit owners that voted against the amendment;
- Authorizes the associations to enter an abandoned unit to inspect the unit, and adjoining common elements, to make specific repairs, and to maintain the unit, and permits the association to charge the unit owner for expenses incurred by the association;
- Permits board and committee members to participate, including voting, in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication, for such participation to count towards a quorum; and
- Extends the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015 to July 1, 2016.

In regards to cooperative associations, the bill:

- Revises the financial reporting requirements by increasing from 60 to 90 days the time to prepare a financial statement, or to contract with a third party to prepare the financial statement, and by specifying the type of financial reporting required based on the association's total annual revenue amounts;

- Limits the financial reporting requirement, for associations of fewer than 50 units, regardless of the association's annual revenues, to the preparation of a report of cash receipts and expenditures, unless otherwise required by the declaration or other recorded governing documents;
- Provides that persons who have been suspended or removed by the division or are delinquent in the payment of any monetary obligation due to the association are not eligible to be a candidate for board membership and may not be listed on the ballot;
- Provides for the removal from office of a director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property;
- Requires boards to place the item on the agenda at its next regular board meeting or at a special meeting of the board when 20 percent of the voting interests petition the board to address an item of business; and
- Provides that the term of a board member who was appointed or elected to fill a vacancy on the board expires at the next annual meeting.

In regards to condominium and cooperative associations, the bill requires outgoing board or committee members to relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within five days after the election. The bill provides that an outgoing board or committee member who violates this requirement is personally subject to a civil penalty by the Division of Florida Condominiums, Timeshares, and Mobile Homes;

In regards to cooperative and homeowners' associations, the bill:

- Authorizes boards to exercise specified emergency powers in response to the declaration of a state of emergency, including the authority to implement a disaster plan, mitigate damages, and borrow money with the approval of the membership; and
- Provides that, in order to determine the liability of the present owner of a unit, the previous owner does not include an association that acquires the title to a delinquent property through foreclosure or by deed in lieu of foreclosure.

In regards to condominium, cooperative, and homeowners' associations, the bill provides that a unit owner is jointly and severally liable with the previous owner not only for all unpaid assessments, but also interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

Marketable Record Title Act

The Marketable Record Title Act (MRTA or act),¹ may cause covenants to lapse by operation of law if the covenants are silent as to expiration, or if the 30-year period in the act is shorter than the stated expiration time.

¹ Chapter 712, F.S.,

Sections 712.02, F.S., provides that:

Any person having the legal capacity to own land in this state, who, alone or together with her or his predecessors in title, has been vested with any estate in land of record for 30 years or more, shall have a marketable record title to such estate in said land, which shall be free and clear of all claims except the matters set forth as exceptions to marketability in s. 712.03. A person shall have a marketable record title when the public records disclosed a record title transaction affecting the title to the land which has been of record for not less than 30 years purporting to create such estate either in:

- (1) The person claiming such estate; or
- (2) Some other person from whom, by one or more title transactions, such estate has passed to the person claiming such estate, with nothing appearing of record, in either case, purporting to divest such claimant of the estate claimed.

Sections 712.05 and 712.06, F.S., provide the process, including notice requirements, for the recording of interest in land and the preservation of covenants and restrictions for community associations which may be extinguished under operation of the act.

Section 720.405(1), F.S., requires that a written notice must be recorded to claim an interest in land and to preserve and protect from extinguishment any covenants or restrictions. Section 720.05, F.S., provides:

Any person claiming an interest in land or a homeowners' association desiring to preserve any covenant or restriction may preserve and protect the same from extinguishment by the operation of this act by filing for record, during the 30-year period immediately following the effective date of the root of title, a notice, in writing, in accordance with the provisions hereof, which notice shall have the effect of so preserving such claim of right or such covenant or restriction or portion of such covenant or restriction for a period of not longer than 30 years after filing the same unless again filed as required herein. No disability or lack of knowledge of any kind on the part of anyone shall delay the commencement of or suspend the running of said 30-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of any claimant who is:

- (a) Under a disability,
- (b) Unable to assert a claim on his or her behalf, or
- (c) One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

Such notice may be filed by a homeowners' association only if the preservation of such covenant or restriction or portion of such covenant or restriction is approved by at least two-thirds of the members of the board of directors of an incorporated homeowners' association at a meeting for which a notice, stating the meeting's time and place and containing the statement of marketable title action described in s. 712.06(1)(b), was mailed or hand delivered to members of the homeowners' association not less than 7 days prior to such meeting.

For covenants that have expired, residents in these communities have the option to revive the covenants after the expiration by following the procedure in ss. 720.403 - 720.407, F.S. The covenant revitalization procedures in ss. 720.403 - 720.407, F.S., are not available to homeowners' associations not governed by ch. 720, F.S., e.g., associations governing communities that are comprised of property primarily intended for commercial, industrial, or other non-residential use.² Non-mandatory associations may not revive covenants pursuant to ss. 702.403 - 702.407, F.S., because ch. 720, F.S., relates to residential homeowners' associations where membership is a mandatory condition for the owners of property.

Section 712.06, F.S., specifies the contents of the notice required under s. 712.05, F.S. Section 712.06(3), F.S., also provides for the service of the notice by the clerk of the circuit court. Section 712.06(3), F.S., provides:

- (3) The person providing the notice referred to in s. 712.05 shall:
 - (a) Cause the clerk of the circuit court to mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall enter on the original, before recording the same, a certificate showing such mailing. For preparing the certificate, the claimant shall pay to the clerk the service charge as prescribed in s. 28.24(8) and the necessary costs of mailing, in addition to the recording charges as prescribed in s. 28.24(12). If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:

I hereby certify that I did on this _____, mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated:

 (Clerk of the circuit court)
 of County, Florida,
 By (Deputy clerk)

The clerk of the circuit court is not required to mail to the purported owner of such property any such notice that pertains solely to the preserving of any covenant or restriction or any portion of a covenant or restriction; or

- (b) Publish once a week, for 2 consecutive weeks, the notice referred to in s. 712.05, with the official record book and page number in which such notice was recorded, in a newspaper as defined in chapter 50 in the county in which the property is located.

According to the Real Property, Probate, and Trust Law Section of The Florida Bar (RPPTL), s. 712.06(3), F.S., requires clerk notification or publication for the notice of preservation

² Section 720.301(8) and (11), F.S.

concerning homeowners' association covenants and restrictions. According to RPPTL, compliance with the notice required under s. 712.06(3), F.S., in the context of the preservation of homeowners' association covenants and restrictions is impracticable because of the large amount of space required to publish the notice which may include tens or hundreds of pages of recorded instruments.

Condominium

A condominium is a “form of ownership of real property created pursuant to [ch. 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.”³ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.⁴ A declaration is like a constitution in that it:

Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.⁵

A declaration “may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.”⁶ A declaration of condominium may be amended as provided in the declaration.⁷ If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.⁸ Condominiums are administered by a board of directors referred to as a “board of administration.”⁹

Section 718.103(8), F.S., defines the term “common elements” to mean the portions of the condominium property not included in the units.

Section 718.103(12), F.S., defines the term “condominium parcel” to mean a unit, together with the undivided share in the common elements appurtenant to the unit.

Section 718.103(19), F.S., defines the term “limited common elements” to mean those common elements that are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.

Section 718.103(23), F.S., defines the term “residential condominium” to mean:

a condominium consisting of two or more units, any of which are intended for use as a private temporary or permanent residence, except that a condominium is not a residential condominium if the use for which the units are intended is primarily

³ Section 718.103(11), F.S.

⁴ Section 718.104(2), F.S.

⁵ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

⁶ Section 718.104(5), F.S.

⁷ See s. 718.110(1)(a), F.S.

⁸ Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

⁹ Section 718.103(4), F.S.

commercial or industrial and not more than three units are intended to be used for private residence, and are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. With respect to a condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use. With respect to a timeshare condominium, the timeshare instrument as defined in s. 721.05(35) shall govern the intended use of each unit in the condominium. If a condominium is a residential condominium but contains units intended to be used for commercial or industrial purposes, then, with respect to those units which are not intended for or used as private residences, the condominium is not a residential condominium. A condominium which contains both commercial and residential units is a mixed-use condominium and is subject to the requirements of s. 718.404.

Cooperative Associations

Section 719.103(12), F.S., defines a “cooperative” to mean:

That form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit’s occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.¹⁰

Homeowners’ Associations

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners’ associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.¹¹

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, or a combination thereof, 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.”¹² Unless specifically stated to the contrary, homeowners’ associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.¹³

¹⁰ See ss. 719.106(1)(g) and 719.107, F.S.

¹¹ See s. 720.302(1), F.S.

¹² Section 720.301(9), F.S.

¹³ Section 720.302(5), F.S.

Homeowners' associations are administered by a board of directors whose members are elected.¹⁴ 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 recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.¹⁵ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.¹⁶

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department) in accordance with ch. 718, F.S.

The division is afforded complete jurisdiction to investigate complaints and enforce compliance with chapter 718, F.S. with respect to associations that are still under developer control.¹⁷ The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301, F.S. After control of the condominium is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S.¹⁸

As part of the division's authority to investigate complaints, s. 718.501(1), F.S., authorizes the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

Chapters 718, 719, and 720, F.S.

Although condominiums and cooperatives are regulated by the division, homeowners' associations are not regulated. Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide for requirements for the governance of these associations. For example, they delineate requirements for notices of meetings,¹⁹ recordkeeping requirements, including which records are accessible to the members of the association,²⁰ and financial reporting.²¹ Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

Rental of Condominium Units

Section 718.110(13), F.S., provides that any amendment of the declaration of condominium that prohibits unit owners from renting their units, that alters the duration of the rental term, specifies

¹⁴ See ss. 720.303 and 720.307, F.S.

¹⁵ See ss. 720.301 and 720.303, F.S.

¹⁶ Section 720.303(1), F.S.

¹⁷ Section 718.501(1), F.S.

¹⁸ Section 718.501(1), F.S. See Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 12 ed. (2010-2011) s. 14.2.

¹⁹ See s. 718.112(2), F.S., for condominiums, s. 719.106(2), F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners' associations.

²⁰ See s. 718.111(12), F.S., for condominiums, s. 719.104(2), F.S., for cooperatives, and s. 720.303(4), F.S., for homeowners' associations.

²¹ See s. 718.111(13), F.S., for condominiums, s. 719.104(4), F.S., for cooperatives, and s. 720.303(7), F.S., for homeowners' associations.

or limits the number of times unit owners are entitled to rent their units during a specified period applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the effective date of that amendment.

Right of Access to Units – Condominiums and Cooperatives

Section 718.111(5), F.S., provides that condominium associations have an irrevocable right of access to each unit during reasonable hours. They have the right to access units when necessary to maintain, repair, or replace any common elements or of any portion of a unit that the association must maintain in accordance with the declaration or as necessary to prevent damage to the common elements or to a unit or units.

Section 719.104(1), F.S., provides a comparable provision for cooperative associations.

Condominium Bylaws-Meetings of the Board

Section 718.112(2)(b)5., F.S., members of the condominium board to meet by telephone conference. Members who appear by teleconference may be counted toward obtaining a quorum and may vote as if physically present. A telephone speaker must be used to permit the conversation to be heard by other board members and any unit owners who may be present.

Condominiums and Cooperatives – Assessments and Foreclosures

Current law defines an “assessment” as the “share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner.”²²

“Special assessment” is defined to mean, “any assessment levied against a unit owner other than the assessment required by a budget adopted annually.”²³

A unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is *without prejudice*²⁴ to any right the owner may have to recover from the previous owner the amounts paid by the owner.²⁵

Section 719.108, F.S., provides a comparable liability provision for cooperative associations.

If a first mortgagee, (e.g., the mortgage lending institution) or its successor or assignee, acquires title to a condominium unit by foreclosure or by deed in lieu of foreclosure, the first mortgagee’s liability for unpaid assessments is limited to the amount of assessments that came due during the 12 months immediately preceding the acquisition of title or one percent of the original mortgage debt, whichever is less.²⁶ However, this limitation applies only if the first mortgagee joined the association as a defendant in the foreclosure action.²⁷ In the foreclosure action, the association may defend its claims for unpaid assessments. A first mortgagee who acquires title to a foreclosed condominium unit is exempt from liability for all unpaid assessments if the first

²² Section 718.103(1), F.S.

²³ Section 718.103(24), F.S.

²⁴ The term “without prejudice” means “[w]ithout loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party.” BLACK’S LAW DICTIONARY (9th ed. 2009).

²⁵ Section 718.116(1)(a), F.S.

²⁶ Section 718.116(1)(b), F.S.

²⁷ *Id.*

mortgage was recorded prior to April 1, 1992.²⁸ The successor or assignee, with respect to the first mortgage, includes only a subsequent holder of the first mortgage.²⁹

Section 718.116(3), F.S., provides for the accrual of interest on unpaid assessments. Unpaid assessments and installments on assessments accrue interest at the rate provided in the declaration from the due date until paid. The rate may not exceed the rate allowed by law.³⁰ If no rate is specified in the declaration, the interest accrues at the rate of 18 percent per year.³¹ The association may also charge an administrative late fee of up to the greater of \$25 or five percent of each installment of the assessment for each delinquent installment for which the payment is late.³² Payments are applied first to the interest accrued, then the administrative late fee, then to any costs and attorney's fees incurred in collection, and then to the delinquent assessment.³³

Distressed Condominium Relief Act

The "Distressed Condominium Relief Act" in part VII of ch. 718, F.S., defines the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties.

Section 718.703(1), F.S., defines the term "bulk assignee" to mean a person who acquires more than seven condominium parcels in a single condominium as provided in s. 718.707, F.S., and receives an assignment of some or substantially all of the rights of the developer as an exhibit in the deed or as a separate instrument recorded in the public records in the county where the condominium is located.

Section 718.703(2), F.S., defines the term "bulk buyer" as a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of developer rights other than the rights specified in this section.

Section 718.704(1), F.S., provides that a bulk assignee assumes all the duties and responsibilities of the developer, and specifies obligations for which the bulk assignee is not liable.

Section 718.707, F.S., specifies a time limit for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the parcels were acquired prior to July 1, 2015. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

Financial Reporting for Cooperatives

Section 719.104(4), F.S., sets forth the financial reporting responsibilities of cooperative associations. Cooperative associations have 60 days after the end of the fiscal year or calendar year to prepare and complete a financial report for the preceding fiscal year. The report must be

²⁸ Section 718.116(1)(e), F.S.

²⁹ Section 718.116(1)(g), F.S.

³⁰ Section 687.02(2), F.S., prohibits as usurious interest rates that are higher than the equivalent of 18 percent per annum simple interest.

³¹ Section 718.116(3), F.S.

³² *Id.*

³³ *Id.*

mailed or furnished by personal delivery to each unit owner. The report must be a complete financial report of actual receipts and expenditures for the previous 12 months, or a complete set of financial statements for the preceding fiscal year prepared in accordance with generally accepted accounting procedures (GAAP).

Section 719.104(4)(a), F.S., specifies the accounts and expenses that must be shown in the report. It provides in pertinent part:

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

1. Costs for security;
2. Professional and management fees and expenses;
3. Taxes;
4. Costs for recreation facilities;
5. Expenses for refuse collection and utility services;
6. Expenses for lawn care;
7. Costs for building maintenance and repair;
8. Insurance costs;
9. Administrative and salary expenses; and
10. Reserves for capital expenditures, deferred maintenance, and any other category for which the association maintains a reserve account or accounts.

Section 719.104(4)(b), F.S., requires that the division adopt rules that may require that the association deliver to the unit owners, in lieu of the financial report required by this section, a complete set of financial statements for the preceding fiscal year.³⁴ The financial statements must be delivered within 90 days following the end of the previous fiscal year or annually on such other date as provided in the bylaws. The division's rules may require that the financial statements be compiled, reviewed, or audited, and the rules shall take into consideration the criteria set forth in s. 719.501(1)(j), F.S.³⁵

Cooperative associations may waive the requirement to have financial statements compiled, reviewed, or audited at a duly called meeting of the association.³⁶ In an association that is under developer control, the developer may vote to waive the audit requirement for the first two years of the operation of the association, after which time waiver of an applicable audit requirement requires the approval of a majority of voting interests other than the developer. The meeting must be held prior to the end of the fiscal year, and the waiver is effective for only one fiscal year.

The reporting requirements in s. 719.401(4), F.S., do not apply to a cooperative that consists of 50 or fewer units.³⁷

³⁴ See rule 61B-76.006, F.A.C., for the division's financial reporting requirements for cooperative associations.

³⁵ Section 719.501(1)(j), F.S., authorizes the division to adopt uniform accounting principles, policies, and standards to be used by all associations in the preparation and presentation of all financial statements required by ch. 719, F.S. The principles, policies, and standards must take into consideration the size of the association and the total revenue collected by the association.

³⁶ Section 719.104(4)(b), F.S.

³⁷ *Id.*

Financial Reporting for Condominium and Homeowners' Associations

Section 718.111(13), F.S., sets forth the financial reporting responsibilities of homeowners' associations. Homeowners' associations have 90 days after the end of the fiscal year to prepare and complete a financial report for the preceding fiscal year. The type of financial statements or information that must be provided is based on the association's total annual revenues.

Section 718.111(13)(a), F.S., provides, in part, that if the association has a total annual revenue of \$150,000 or more, but less than \$300,000, the association must prepare compiled financial statements.³⁸ If the association has a total annual revenue of at least \$300,000 and not less than \$500,000, the association must prepare reviewed financial statements.³⁹ If the total annual revenue is \$500,000 or more, the association must prepare audited financial statements.⁴⁰ If the total annual revenue is less than \$150,000, then a report of cash receipts must be prepared.⁴¹ An association having less than 50 parcels, regardless of annual revenue, may prepare a report of cash receipt and expenditures instead of financial statements, unless the governing documents provide otherwise.⁴²

The amounts of total annual revenue and the type of financial statement requirements are identical to the financial reporting requirements for homeowners' associations in s. 720.303(7), F.S.

III. Effect of Proposed Changes:

Marketable Record Title Act

The bill amends s. 712.05(1), F.S., to provide that the homeowners' association or the clerk of the circuit court is not required to provide notice other than as provided under s. 712.06(3), F.S., the bill also provides that this provision is intended to clarify existing law.

Rental of Condominium Units

The bill amends s. 718.110(13), F.S., to provide that an amendment that prohibits unit owners from renting their units, that alters the duration of the rental term, specifies or limits the number of times unit owners are entitled to rent their units during a specified period does not apply to unit owners that voted against the amendment. It does apply to unit owners who consented to the amendment, failed to cast a vote on the amendment, or acquired title after the effective date of the amendment.

³⁸ A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant's (CPA) assurance as to conformity with GAAP. Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron's Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron's 2000).

³⁹ A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

⁴⁰ An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

⁴¹ Section 718.111(13)(b)1., F.S.

⁴² Section 718.111(13)(b)2., F.S.

Right of Access to Units – Condominiums

The bill creates s. 718.111(5)(b), F.S., to expand the authority of the board to enter abandoned condominium units. Section 718.111(5)(b)1., F.S., provides that, at the sole direction of the board, the association may enter an abandoned unit to inspect it and adjoining common elements, to make specific repairs, and to maintain the unit. This includes repairs to the unit or common elements serving the unit. The bill permits the board to enter an abandoned unit to repair damage from mold, to determine if any mold or deterioration is present, to turn on the power for the unit, and to otherwise maintain, preserve, and protect the unit and adjoining common elements.

Section 718.111(5)(b)1., F.S., provides that a unit is presumed to be abandoned if it is subject to a foreclosure action and not been resided in for at least four continuous weeks without prior notice to the association. A unit is also presumed abandoned if a person has not resided in the unit for at least two consecutive months without notice to the association and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry. The bill does not define what efforts to determine the whereabouts of the owner would constitute reasonable inquiry.

Section 718.111(5)(b)2., F.S., provides that, except in the case of an emergency, an association may not enter a unit until after 48 hours' notice of intent to enter has been delivered to the owner at the address of the owner as reflected in the records of the association.

Section 718.111(5)(b)3., F.S., permits the association to charge the unit owner for any expense incurred by the association. The charge is enforceable as an assessment pursuant to s. 718.116, F.S., and the association may use its lien authority provided in s. 718.116, F.S., to enforce collection of the expense. This provision does not provide guidance as the type of expenses that the association may incur and assign to the unit owner, e.g., it does not distinguish between the actual cost to repair mold or deterioration of the property and administrative expenses incurred by the association in its efforts to contact the unit owner.

Section 718.111(5)(b)4., F.S., authorizes the association to petition a court of competent jurisdiction to appoint a receiver and to rent an abandoned unit for the benefit of the association to offset the association's costs and expenses of maintaining, preserving, and protecting the unit and the adjoining common elements, including the costs of the receivership and all unpaid assessments, interest, administrative late fees, costs of collection, and attorney fees against the rental income.

Condominiums - Official Records

The bill also creates s. 718.111(12)(f), F.S., to require an outgoing board or committee member to relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within five days after the election. The bill provides that outgoing board or committee member who violates this requirement is personally subject to a civil penalty pursuant to s. 718.501(1)(d), F.S.⁴³ The requirement that the records and property

⁴³ Section 718.501(1)(d), F.S., authorizes the division to impose a civil penalty individually against an officer or board member who willfully and knowingly violates a provision of this chapter, adopted rule, or a final order of the division. The civil penalty may not exceed \$5,000.

must be relinquished within five days after an election may not apply, or may be vague, in circumstances in which an election is not held to fill a vacancy on the board, e.g., s. 718.112(2)(d)2., F.S., provides that an election is not required if the number of vacancies equals or exceeds the number of candidates.

The bill provides a comparable provision for cooperative associations in s. 719.104(2)(e), F.S.

Condominiums - Bylaws-Meetings of the Board

The bill amends s. 718.112(2)(b)5., F.S., to permit a board or committee member's participation in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication to count towards a quorum and that the member can vote as if present. There is a comparable provision in current law for meetings of the board of cooperative associations.⁴⁴

The bill also amends s. 718.112(2)(c), F.S., to provide that a board member may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail.

Condominiums-Assessments

The bill amends s. 718.116(1)(a), F.S., to provide that a unit owner is jointly and severally liable with the previous owner not only for all unpaid assessments, but also interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process. The bill provides a comparable provision for cooperative associations in s. 719.108(1), F.S., and for homeowners' associations in s

The bill also provides that the previous owner does not include an association that acquires the title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present unit owner's liability for these costs associated with the collection process is limited to the amounts that accrued before the association acquired the title to the delinquent property. Current law provides a comparable provision for homeowners' associations in s. 720.3085(2)(b), F.S. The bill provides a comparable provision for cooperative associations in s. 719.108(1), F.S.

Distressed Condominium Relief Act

The bill amends s. 718.707, F.S., to extend the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015 to July 1, 2016.

Cooperatives - Official Records

The bill also creates s. 719.104(2)(e), F.S., to require an outgoing board or committee member to relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within five days after the election. The bill provides that outgoing board or committee member who violates this requirement is personally subject to a civil penalty pursuant to s. 719.501(1)(d), F.S.⁴⁵

The bill provides a comparable provision for condominium associations in s. 718.111(12)(f), F.S.

⁴⁴ Section 719.106(2)(b)5., F.S.

⁴⁵ Section 719.501(1)(d)4., F.S., authorizes the division to impose a civil penalty individually against an officer or board member who willfully and knowingly violates a provision of this chapter, adopted rule, or a final order of the division. The civil penalty may not exceed \$5000.

Cooperatives – Financial Reporting

The bill amends s. 719.104(4), F.S., to specify the type of financial reporting that a cooperative association must prepare. The bill increases the time that the board has to prepare a financial statement from 60 to 90 days. It is unclear under the bill whether the board has 90 days to contract with a third party to prepare the financial statement or whether the third party must complete the financial statement within the 90 days. It provides that within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, the board must provide each member of the association a copy of the financial report or a notice that it is available at no charge. The bylaws may provide for different time frames for the financial report.

The bill deletes the current provisions concerning the preparation and distribution of the financial statements which requires a complete financial report of receipts and expenditures for the previous 12 months or a complete set of financial statements for the preceding fiscal year prepared by generally accepted accounting procedures. It provides that the new financial reports must conform to generally accepted accounting principles. The type of reporting is based on the association's total annual revenue.

An association with total annual revenues between \$150,000 and \$299,000 must prepare compiled financial statements. An association having total annual revenues of at least \$300,000, but less than \$499,999 must prepare reviewed financial statements. An association with total revenues of \$500,000 or more must prepare audited financial statements.

Section 719.104(4)(c)1., F.S., provides that an association with total annual revenue of less than \$150,000 must prepare a report of cash receipts and expenditures.

These financial reporting thresholds are comparable to those required under the division's current financial reporting rule for cooperatives.⁴⁶ The thresholds are also comparable to the financial reporting thresholds for condominiums in s. 718.111(13), F.S., and for homeowners' associations in s. 720.303(7), F.S.

Section 719.104(4)(c)2., F.S., provides that an association of fewer than 50 units, regardless of the association's annual revenues, must prepare a report of cash receipts and expenditures, unless otherwise required by the declaration or other recorded governing documents.

The Institute of Certified Public Accountants has raised concerns about the smaller associations being exempt from the monetary requirements for reports. The institute is concerned that some smaller associations may have substantial assets and expenses that should have the same reporting requirements.

Section 719.104(4)(c)3., F.S., specifies the receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications that must be disclosed in the report of cash receipts and expenditures.

⁴⁶ See rule 61B-76.006, F.A.C.

Section 719.104(4)(d), F.S., provides that, if at least 20 percent of the unit owners petition the board for a greater level of financial reporting than required under s. 719.104, F.S., the association must duly notice and hold a meeting of the members within 30 days after receipt of the petition to vote on raising the level of reporting. Upon approval by a majority of the voting interests present at the meeting, the association must prepare an amended budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the declaration or other recorded governing documents. Section 719.104(4)(d), F.S., also requires that the association provide the following within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

- Compiled, reviewed or audited financial statements be prepared if the association is otherwise required to prepare a report of cash receipts and expenditures;
- Reviewed or audited financial statements be prepared if the association is otherwise required to prepare compiled financial statements; or
- Audited financial statements be prepared if the association is otherwise required to prepare reviewed financial statements.

Section 719.104(4)(e), F.S., provides that, if approved by a majority of voting interests present at a duly called meeting, an association may prepare or cause to be prepared:

- A report of cash receipts and expenditures in lieu of a compiled, reviewed or audited financial statement;
- A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
- A report of cash receipts and expenditures, a compiled financial statement or a reviewed financial statement in lieu of an audited financial statement.

Cooperatives – Officers and Directors

The bill amends s. 719.106(1)(a)2., F.S., to provide that a person who has been suspended or removed by the division under ch. 719, F.S.,⁴⁷ or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. Section 718.112(2)(d)2., F.S., provides a comparable provision for condominium associations in current law.

Section 719.106(1)(a)2., F.S., also provides that a director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first.⁴⁸ While the criminal charge is pending, the officer or director may not be appointed or elected to a position as a director or officer. The director or officer must be

⁴⁷ Section 719.501(1)(d)6., F.S., authorizes the division to order the removal of an officer or board member who has willfully and knowingly violated a provision of ch. 719, F.S., adopted rule, or a final order of the division.

⁴⁸ Section 719.106(1)(d)6., F.S., provides for the filling of a vacancy, unless otherwise provided in the bylaws. If a vacancy occurs on the board before the expiration of a term, it may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. Alternatively, a board may hold an election to fill the vacancy. Unless otherwise provided in the bylaws, a board member appointed or elected under this subparagraph shall fill the vacancy for the unexpired term of the seat being filled.

reinstated for the remainder of his or her term of office, if any, if the charges are resolved without a finding of guilt. Section 718.112(2)(o), F.S., provides a comparable provision in current law for condominium associations.

This provision also provides that a person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least five years as of the date such person seeks election to the board. The bill provides that the validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. Section 718.112(2)(d)2., F.S., provides a comparable provision in current law for condominium associations.

Meetings of the Board

The bill amends s. 719.106(1)(c), F.S., to require that notice of board meetings must specifically identify all agenda items. The bill also provides that, if 20 percent of the voting interests petition the board to address an item of business, the board must place the item on the agenda at its next regular board meeting or at a special meeting of the board. The item must be placed on an agenda no later than 60 days after the petition is received. Section 718.112(1)(c)1., F.S., provides a comparable provision for condominium associations.

The bill amends s. 719.106(1)(d)6., F.S., to provide that the term of a board member who was appointed or elected to fill a vacancy on the board expires at the next annual meeting. It deletes the current provision that appointed or elected member shall fill the unexpired term of the seat being filled.

Cooperatives-Assessments

The bill amends s. 719.108(1), F.S., to provide that a unit owner is jointly and severally liable with the previous owner not only for all unpaid assessments, but also interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process. The bill provides a comparable provision for condominium associations in s. 718.116(1)(a), F.S., and homeowners' associations in s. 720.3085(2)(b), F.S.

The bill also provides that the previous owner does not include an association that acquires the title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present unit owner's liability for these costs associated with the collection process is limited to the amounts that accrued before the association acquired the title to the delinquent property. Current law provides a comparable provision for homeowners' associations in s. 720.3085(2)(b), F.S. The bill provides a comparable provision for condominium associations in s. 718.116(1)(a), F.S.

Emergency Powers for Cooperative Boards

The bill creates s. 719.128, F.S., to authorize the boards of cooperative associations, to the extent allowed by law, to exercise the following emergency powers in response to the declaration of a

state of emergency in accordance with s. 252.36(2), F.S.,⁴⁹ or a mandatory evacuation order is issued by civil or law enforcement authorities.

The association's articles of incorporation or bylaws may specifically prohibit the exercise of the powers granted by the bill. The exercise of authority must also be consistent with the standards of s. 617.0830, F.S., which sets forth the general standards for directors of a corporation not for profit, including acting in good faith, acting with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and acting in a manner that he or she reasonably believes to be in the best interests of the corporation.

The bill authorizes the board to:

- Conduct board or membership meetings with notice of the meetings and the board's decisions by any means the board deems appropriate and practical under the circumstances;
- Cancel and reschedule any association meeting;
- Appoint persons to act as agents for or assist any director or officer due to incapacity or unavailability;
- Relocate the principal office or designate alternative principal offices;
- Provide notice of board meetings decisions by posted signs, mailed notice to members, internet postings, public service announcements, or any other means of communication which the board deems reasonable under the circumstances;
- Enter into agreements with counties and municipalities for debris removal;
- Implement a disaster plan prior to, or after, a catastrophic event, including shutting down elevators, electricity, water, sewer, security systems or air conditioners;
- Based on the advice of emergency management officials or licensed professionals retained by the board, declare any portion of the condominium property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees in order to protect the health, safety, or welfare of such persons;
- Based on the advice of emergency management officials or license professionals retained by the board, determine whether the condominium property can be safely inhabited or occupied. However, such evaluation is not conclusive as to any determination of habitability pursuant to the declaration; and
- Require the evacuation of the property. The association is immune from liability for injury to persons or property arising from the failure to follow an evacuation required by the board.

In response to damage caused by an event for which a state of emergency is declared in accordance with s. 252.36(2), F.S., the association may:

- Mitigate further damage, including preventing or eradicating fungus, mold, or mildew by removing wet drywall, insulation, carpet, cabinetry, or other fixtures, even if the unit owner is obligated by the declaration or law to insure or replace such items, and removing personal property from a unit;

⁴⁹ Section 252.36, F.S., provides emergency management powers to the Governor. Section 252.36(2), F.S., authorizes the Governor to declare a state of emergency by executive order or proclamation if she or he finds an emergency has occurred or is imminent.

- Contract, on behalf of the unit owner, for services which are necessary to prevent further damage to the cooperative property, including:
 - drying of units,
 - boarding of broken windows or doors, and
 - replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the property;
- Levy special assessments without a vote of the owners; and
- Borrow money and pledge association assets as collateral without unit owner approval.

The bill provides that the grant of authority to condominium boards to borrow money is not intended to limit the general authority of the association to borrow money.

The bill provides that the use of the special powers authorized under this section is limited to those times and circumstances that are reasonably necessary to the health, safety, and welfare of persons, and to mitigate further damage and make emergency repairs.

Current law provides a comparable provision for condominium associations in s. 718.1265, F.S. The bill provides a comparable provision for cooperative associations in s. 720.316, F.S.

Homeowners' Associations – Assessments

The bill amends s. 720.3085(2)(b), F.S., to provide that a unit owner is jointly and severally liable with the previous owner not only for all unpaid assessments, but also interest, late charges, and reasonable costs and attorney fees incurred by the association incident to the collection process. The previous owner does not include an association that acquires the title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present unit owner's liability for these costs associated with the collection process is limited to the amounts that accrued before the association acquired the title to the delinquent property.

The bill provides a comparable provision for condominium associations in s. 718.116(1)(a), F.S., and cooperative associations in s. 719.108(1), F.S.

Emergency Powers for Homeowners' Association Boards

The bill creates s. 720.316, F.S., to authorize the boards of homeowners' associations, to the extent allowed by law, to exercise the following emergency powers in response to the declaration of a state of emergency in accordance with s. 252.36(2), F.S.,⁵⁰ or a mandatory evacuation order is issued by civil or law enforcement authorities.

The association's articles of incorporation or bylaws may specifically prohibit the exercise of the powers granted by the bill. The exercise of authority must also be consistent with the standards of s. 617.0830, F.S., which sets forth the general standards for directors of a corporation not for profit, including acting in good faith, acting with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and acting in a manner that he or she reasonably believes to be in the best interests of the corporation.

⁵⁰ Section 252.36, F.S., provides emergency management powers to the Governor. Section 252.36(2), F.S., authorizes the Governor to declare a state of emergency by executive order or proclamation if she or he finds an emergency has occurred or is imminent.

The bill authorizes the board to:

- Conduct board meetings with notice given only to directors with whom it is practicable to communicate;
- Cancel and reschedule any association meeting;
- Appoint persons to act as agents for or assist any director or officer due to incapacity or unavailability;
- Relocate the principal office or designate alternative principal offices;
- Provide notice of board meetings decisions by posted signs, mailed notice to members, internet postings, public service announcements, or any other means of communication which the board deems reasonable under the circumstances;
- Enter into agreements with counties and municipalities for debris removal;
- Implement a disaster plan prior to, or after, a catastrophic event, including shutting down elevators, electricity, water, sewer, security systems or air conditioners;
- Based on the advice of emergency management officials or licensed professionals retained by the board, declare any portion of the condominium property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees in order to protect the health, safety, or welfare of such persons; and
- Based on the advice of emergency management officials or licensed professionals retained by the board, determine whether the condominium property can be safely inhabited or occupied. However, such evaluation is not conclusive as to any determination of habitability pursuant to the declaration.

In response to damage caused by an event for which a state of emergency is declared in accordance with s. 252.36(2), F.S., the association may:

- Mitigate further damage, including preventing or eradicating fungus, mold, or mildew by removing wet drywall, insulation, carpet, cabinetry, or other fixtures on or within association property;
- Levy special assessments without a vote of the owners; and
- Borrow money and pledge association assets as collateral without unit owner approval.

The bill provides that the grant of authority to homeowners' association boards to borrow money is not intended to limit the general authority of the association to borrow money.

The bill provides that the use of the special powers authorized under this section is limited to those times and circumstances that are reasonably necessary to the health, safety, and welfare of persons, and to mitigate further damage and make emergency repairs.

Current law provides a comparable provision for condominium associations in s. 718.1265, F.S. The bill provides a comparable provision for cooperative associations in s. 719.128, F.S.

Effective Date

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 712.05, 718.110, 718.111, 718.112, 718.116, 718.707, 719.104, 719.106, 719.108, and 720.3085.

This bill creates sections 719.128 and 720.316 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
