

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 807 Residential Properties

SPONSOR(S): Judiciary Committee; Business & Professional Regulation Subcommittee; Civil Justice Subcommittee; Moraitis, Jr.

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 798

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Cary	Bond
2) Business & Professional Regulation Subcommittee	9 Y, 3 N, As CS	Butler	Luczynski
3) Judiciary Committee	17 Y, 0 N, As CS	Cary	Havlicak

SUMMARY ANALYSIS

Relating to the statutory regulation of various forms of residential properties, this bill:

- Defines the term "timeshare project," which is a timeshare property that is also a public lodging establishment, and substitutes the new term for "timeshare plan" as appropriate.
- Specifies that the statutory notice required of a homeowners' association to renew its covenants and restrictions for an additional 30 years is sufficient.
- Provides that a condominium association may access an abandoned unit for the purpose of preservation of the unit and may seek appointment of a receiver to lease the unit to offset costs of maintenance.
- Broadens the information that a condominium, cooperative or homeowners' association may include in a member directory.
- Requires outgoing board members of a condominium or cooperative to relinquish possession of records and property of the association to their successors in office, and authorizes the state to enforce compliance.
- Extends condominium bulk assignee and bulk buyer provisions by one year to July 1, 2016.
- Amends cooperative law to match condominium law on financial oversight, the prohibition on office-holding if delinquent or charged with theft of association funds, and emergency powers.
- Amends homeowners' association emergency powers to parallel those of a condominium.
- Simplifies the notice requirements regarding amendments to the restrictive covenants of a homeowners' association.
- Repeals the Community Association Living Study Council.

The bill does not appear to create a fiscal impact on state or local governments.

The effective date of the bill is July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Timeshares and Public Lodging Regulation

The state Division of Hotels and Restaurants¹ regulates public lodging establishments, primarily related to health and safety issues.² A timeshare plan³ may be a "public lodging establishment"⁴ if it is rented for less than 30 days,⁵ as a "vacation rental."⁶ Timeshares and other vacation plans are more extensively regulated by the Division of Condominiums, Timeshares and Mobile Homes.⁷ Both divisions are housed in the Department of Business and Professional Regulation.

A "transient public lodging establishment" is defined in s. 509.013, F.S., as:

[A]ny unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

A "vacation rental" is defined in s. 509.242, F.S., as:

[A]ny unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment.

This bill defines the term "timeshare project" as:

[A] timeshare property, as defined in chapter 721, that is located in this state and that is also a transient public lodging establishment.

The bill amends s. 509.242, F.S., to remove "timeshare plans" from the definition of a "vacation rental" and to affirmatively exclude the newly created "timeshare projects" from regulation as a "vacation rental." In other sections, instances of the term "timeshare plan" have been replaced with the more appropriate term "timeshare project," and the term "timeshare project" has been included wherever the term "vacation plan" or "vacation rental" appears in the regulation of public lodging establishments.

Marketable Record Title Act and Homeowners Associations

The Marketable Record Title Act (MRTA) was enacted in 1963 to simplify and facilitate land transactions.⁸ In general, MRTA provides that any person vested with any estate in land of record for 30 years or more has a marketable record title free and clear of most claims. One effect of MRTA is that homeowner association covenants can lose effect unless the association timely files a renewal. A homeowners' association wishing to timely renew its covenants may only do so under the following conditions:

¹ Section 509.013(1), F.S.

² Section 509.032(1), F.S.

³ Section 721.05(39), F.S.

⁴ Section 509.013(4)(a), F.S.

⁵ Section 509.013(4)(b)4., F.S.

⁶ Section 509.242(1)(c), F.S.

⁷ See generally, ch. 721, F.S.

⁸ *Blanton v. City of Pinellas Park*, 887 So.2d 1224, 1227 (Fla. 2004).

- The board must give written notice to every parcel owner in a form set by statute;⁹
- The notice must include notice of a meeting of the board of directors including where the directors will decide whether to renew the covenants;¹⁰
- The board of directors of the association must approve the renewal by a two-thirds vote;¹¹
- Notice of the renewal must be recorded in the Official Records of the county;¹² and
- A copy of the notice must be published once a week for 2 consecutive weeks in the form and manner as other legal notices are published.¹³

The bill affirmatively clarifies in s. 712.05, F.S., that a homeowners' association or clerk of the circuit court is not required to provide additional notice pursuant to s. 712.06(3), F.S.

Condominium Associations

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which are individually owned, but have an undivided share of access to common facilities.¹⁴ A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.¹⁵ 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.¹⁶ Further, it delineates condominium association bylaws, which govern the administration of the association, including, but not limited to, establishment of a quorum, voting rights, and election and removal of board members.¹⁷

Access to an Abandoned Condominium Unit

A condominium association has the right to access each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements, to any portion of a unit maintained by the association pursuant to the declaration, or as necessary to prevent damage to the common elements or to a unit. The bill amends s. 718.111(5), F.S., to add that the condominium association also has a right of access to an abandoned unit to:

- Inspect the unit and adjoining common elements;
- Make repairs to the unit or to the common elements serving the unit, as needed;
- Repair the unit if mold or deterioration is present;
- Turn on the utilities for the unit; or
- Otherwise maintain, preserve, or protect the unit and adjoining common elements.

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

Before entry, the association must give at least 2 days' notice of the association's intent to enter the unit, which must be mailed or hand-delivered to the owner at the address of the owner as reflected in the records of the association. The notice may be given by electronic transmission to a unit owner who has consented to receive notice by electronic transmission.

⁹ Section 712.06(1)(b), F.S.

¹⁰ Section 712.05(1), F.S.

¹¹ *Id.*

¹² Section 712.06(2), F.S.

¹³ Section 712.06(3)(b), F.S.

¹⁴ Section 718.103(11), F.S.

¹⁵ Section 718.104(2), F.S.

¹⁶ Section 718.104(5), F.S.

¹⁷ Section 718.112, F.S.

The association may recover from the unit owner any costs incurred by the association. The association may place a lien against the unit to enforce collection of the expense.

The association may petition a court of competent jurisdiction to appoint a receiver and may lease an abandoned unit for the benefit of the association to offset the association's 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, and reasonable attorney's fees.

Responsibility for Damage to the Condominium

A condominium association is required to maintain a property insurance policy covering loss or damage to the condominium.¹⁸ At one time, the split between association responsibility for loss and owner responsibility was set in the declaration of condominium, but that required insurance companies to review condominium documents when writing coverage and inevitably led to gaps where neither the association nor a member would have insurance for a loss, or led to unnecessary double coverage. Section 718.111(11)(f), F.S., resolves these insurance provisions by providing a clear split between association coverage and unit owner coverage. Where a covered loss to association property occurs, the association is responsible for the repair as a common expense. The bill amends s. 718.111(11)(j), F.S., to provide that where a loss occurs that is not an insurable event, the responsibility for the repair is as set forth in the declaration of condominium or the bylaws. Therefore, the split of responsibility in s. 718.111(11)(f), F.S., only covers insurable events.

Condominium Association Directory

Condominium law requires the association to keep and maintain certain records.¹⁹ In general, all records of the association are open for copying and inspection by any member of the association.²⁰ However, certain records, including names and phone numbers of unit owners, are confidential.

Some associations publish a unit owner directory for the convenience of the members. An association may publish such a directory that includes unit owners' names, unit addresses, and a phone number. A unit owner may opt out of being published in the directory. The bill provides that multiple phone numbers may be published, and provides that a unit owner may consent to having other contact information published.²¹

Association Records

The bill creates s. 718.111(12)(f), F.S., to provide that an outgoing board member or committee member must 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 5 days after the election. The Division of Florida Condominiums, Timeshares and Mobile Homes may enforce this requirement by imposing a civil penalty²² against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

Meetings of the Board of Directors

Current law contemplates that most meetings of the directors will be in person, but meeting through use of a teleconference is allowed provided a speakerphone is used. The bill amends s. 718.112(2)(b)5., F.S., to also allow real-time videoconferencing, or similar real-time electronic or video communication,

¹⁸ Section 718.111(11)(d), F.S.

¹⁹ See generally, s. 718.111(12), F.S.

²⁰ Section 718.111(12)(c), F.S.

²¹ Other contact information is a broad term that could include email address, instant message (IM) addresses, Twitter names, or any other form of communication that may exist or be invented.

²² Section 718.501(1)(d)6., F.S., provides for a civil penalty of up to \$5,000. The section also provides that a person who complies with an order of the division within 10 days may not be penalized.

in lieu of physical appearance at the meeting. Directors who appear electronically count toward establishing a quorum and may vote. The bill also amends s. 718.112(2)(c), F.S., to allow board members to communicate via e-mail, although e-mail voting is not allowed.

The bill amends s. 718.112, F.S., to clarify the language to provide that if 20 percent of the voting interests within the condominium association petition the board to address an item of business that the Board needs to put such item on its agenda for its next regular or special board meeting within 60 days, but that such meeting does not need to occur within 60 days.

Bulk Assignee and Bulk Buyer Provisions

Bulk assignees and bulk buyers are real estate investors who buy more than seven condominium units from a developer.²³ Regular condominium law requires turnover of association control to the owners when a developer has sold a percentage of the units, but the requirement of an early turnover discourages investors from buying distressed units. To encourage investors to rehabilitate financially troubled condominiums, the bulk assignee and bulk buyer provisions in ss. 718.701-.708, F.S., delay the turnover requirement and provide other legal protections to bulk assignees and bulk buyers. These protections are currently set to expire by a requirement that the bulk transfer occur no later than July 1, 2015. The bill amends s. 718.707, F.S., to extend the acquisition deadline to July 1, 2016.

Community Association Living Study Council

The Community Association Living Study Council (Council) was created in 2004 as the Advisory Council on Condominiums.²⁴ to receive public input on issues relating to condominium living and to recommend changes to condominium laws. The Council was also directed to review, evaluate, and advise the Division of Florida Condominiums, Timeshares, and Mobile Homes about revisions and adoption of rules and to recommend improvements to the Division's education programs. In 2008, the Council's title was changed and its mandate was expanded to include cooperative and homeowners' associations.²⁵ While its mandate expanded, its presence was significantly reduced, as the 2008 bill directed to Council to only meet every five years.

On March 7, 2014, the Council voted to recommend that the Legislature repeal the Council's enabling statute.²⁶ This bill repeals s. 718.50151, F.S., to eliminate the Community Association Living Study Council.²⁷

Cooperative Associations

A cooperative is a form of real property ownership created pursuant to ch. 719, F.S. The real property is owned of record by the cooperative association,²⁸ and individual units are leased to the residents, who own shares in the cooperative association.²⁹ The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives are, in practice, operated in a fashion very similar to condominiums, and the laws regulating cooperatives are in many instances nearly identical.

The bill changes cooperative law in the same manner that condominium law is being changed by the bill (see description above) in the following aspects:

- Owner records and directories; and,

²³ Section 718.703, F.S.

²⁴ Chapter 2004-345, L.O.F.

²⁵ Chapter 2008-28, L.O.F.

²⁶ See Community Association Living Study Council Meeting minutes, March 7, 2014 (on file with Judiciary Committee staff).

²⁷ The Department of Business and Professional Regulation has reported to Judiciary Committee staff that there will be no adverse effects to the Division with the repeal of this section of the statute.

²⁸ Section 719.103(2), F.S.

²⁹ Section 719.103(26), F.S.

- The requirement that an outgoing board or committee member relinquish official records and property of the association.

The bill amends cooperative law to match previous changes to condominium law in the following aspects:

- The bill increases the cooperative association audit deadlines and thresholds at s. 719.104(4)(a), F.S., to match those at s. 718.111(13), F.S.
- The bill amends s. 719.106(1)(a), F.S., by adding a prohibition on holding office in the cooperative upon delinquency in payment of monies owned to the association, or upon a felony theft or embezzlement charge by information or indictment involving association funds, to match the same requirement at s. 718.112(2)(o), F.S.
- The bill creates s. 719.128, F.S., to give a cooperative association the same emergency powers as a condominium association under s. 718.1265, F.S.

Homeowners' Associations

A homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision. Only homeowners' associations whose covenants and restrictions include mandatory assessments are regulated by the statute.³⁰ There is no state agency directly regulating homeowners' associations.

The bill changes homeowners' association law in the same manner that condominium law is being changed by this bill (see description above) with respect to owner records and directories.

The bill changes homeowners' association law to match previous changes to condominium law by creating s. 720.316, F.S., to give a homeowners' association the emergency powers similar to those granted a condominium association under s. 718.1265, F.S. However, where the emergency powers of a condominium association (current law) or a cooperative association (created by the bill) include the right to enter individual units, this bill does not grant to a homeowners' association the right to entry into individual homes.

Amendment to Governing Documents of a Homeowners Association.

A homeowners' association may amend its governing documents. The process for amendment, and the vote required is generally found in the governing documents. Once adopted, an amendment to the governing documents must be recorded in the public records. A homeowners' association must furnish each member with a copy of an amendment within 30 days of recording.³¹

The bill provides that, in lieu of furnishing all members with a copy of the amendment, and if a draft copy was furnished to the members prior to adoption, the association may provide notice that the amendment was adopted. The notice must refer to the local recording information and must offer to furnish a copy on request and without charge.

B. SECTION DIRECTORY:

Section 1 amends s. 509.013, F.S., regarding definitions.

Section 2 amends s. 509.032, F.S., regarding duties.

Section 3 amends s. 509.221, F.S., regarding sanitary regulations.

Section 4 amends s. 509.241, F.S., regarding licenses required; exceptions.

Section 5 amends s. 509.242, F.S., regarding public lodging establishments; classifications.

³⁰ Section 720.301(9), F.S.

³¹ Section 720.306(1)(b), F.S.

Section 6 amends s. 509.251, F.S., regarding license fees.

Section 7 amends s. 712.05, F.S., regarding filing notice.

Section 8 amends s. 718.111, F.S., regarding the association.

Section 9 amends s. 718.112, F.S., regarding bylaws.

Section 10 repeals s. 718.50151, F.S., regarding the Community Association Living Study Council and membership functions.

Section 11 amends s. 718.707, F.S., regarding time limitation for classification as bulk assignee or bulk buyer.

Section 12 amends s. 719.104, F.S., regarding cooperatives; access to units; records; financial reports; assessments; purchase of leases.

Section 13 amends s. 719.106, F.S., regarding bylaws; cooperative ownership.

Section 14 creates s. 719.128, F.S., regarding association emergency powers.

Section 15 amends s. 720.303, F.S., regarding association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.

Section 16 amends s. 720.306, F.S., regarding meetings of members; voting and election procedures; amendments.

Section 17 creates s. 720.316, F.S., regarding association emergency powers.

Section 18 provides an effective date of July 1, 2014.

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:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

The bill creates a matter that the state may investigate and prosecute regarding condominium and cooperative associations, namely, the requirement for outgoing directors to return records and property to the association. It is unknown how often directors fail to return records, and the division's analysis indicates that the fiscal impact is unknown.³² Typical enforcement policy is to first warn and give an opportunity to cure. It is estimated that this enforcement would be infrequent and that in those infrequent instances most subjects of enforcement would immediately comply with the requirement to return records and property. Accordingly, the impact is likely minimal to none.

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 appears to require minimal rulemaking. DBPR appears to have sufficient current rulemaking authority to implement any rules that may be required.³³

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

³² 2014 Department of Business and Professional Regulation Legislative Bill Analysis of SB 798, the Senate companion, dated February 20, 2014, on file with the House of Representatives Civil Justice Subcommittee.

³³ *Id.*

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The proposed committee substitute provides a definition for "timeshare project" and substitutes it for "timeshare plan" where appropriate, provides that in the absence of an insurable event, the association or the unit owners will be responsible for repairs, as determined by the declaration of condominium or bylaws, provides that an association may print all telephone numbers of a member, and makes other grammatical and technical changes.

On March 18, 2014, the Business & Professional Regulation Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments make technical changes and remove Section 8 from the bill.

On March 27, 2014, the Judiciary Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments restore current law to a definition that had been unnecessarily changed in a prior draft and repeals the Community Association Living Study Council. This analysis is drafted to the committee substitute as passed by the Judiciary Committee.