

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/CS/CS/SB 748

INTRODUCER: Fiscal Policy Committee; Judiciary Committee; Regulated Industries Committee and Senator Ring

SUBJECT: Residential Properties

DATE: April 21, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Wiehle</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Oxamendi/Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 748 relates to the governance of condominium, cooperative, and homeowners' associations (community associations).

The bill permits corporations not for profit to use a copy, facsimile, or other reliable reproduction of the original proxy for any purpose for which the original proxy could be used if it is a complete reproduction of the entire proxy. In current law, community associations may be corporations for profit or corporations not for profit.

For condominium associations, the bill:

- Provides that, in cases where damage to condominium property is not the result of an insurable event, the maintenance provisions of the declaration or bylaws determine whether the association or the unit owners are responsible for the repair or replacement;
- Provides that, for the period before turnover of control, the developer's vote to reduce or waive the funding of reserves is based on the developers voting interests allocated to its units; and
- Extends from July 1, 2016, from July 1, 2018, the date before which condominium parcels must be purchased to qualify as a bulk assignee or bulk buyer.

For cooperative associations, the bill provides that neither the board members nor the persons residing in a board member's household may sit on the committee charged with determining whether to confirm or reject the fine or suspension levied by the board.

For condominium and homeowners' associations, the bill provides that, when voting rights are suspended, the total number of voting interests of the association must be reduced by the number of suspended voting interests when calculating the total percentage or number required to take or approve any action, and that the suspended voting interests may not be used for any purpose.

For condominium, cooperative, and homeowners' associations, the bill:

- Creates a mechanism for Internet-based online voting in condominium, cooperative, and homeowners' associations;
- Permits associations to file a lien on unpaid administrative late fees; and
- Clarifies that it is the board of the association that levies any fines and that the role of the impartial committee is limited to determining whether to confirm or reject the fine or suspension levied by the board.

Regarding homeowners' association, the bill provides that:

- The board may not levy a fine exceeding \$100, unless otherwise provided in the association's governing documents;
- Members that fail to pay a fine may be suspended from the board of directors or barred from running for a seat on the board;
- Chapter 720, F.S., may be cited as the "Homeowners' Association Act;" and
- The association's failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

The bill has no fiscal impact on state or local government.

## II. Present Situation:

### **Community Associations, Chapters 718, 719, and 720, F.S.**

Condominiums and cooperatives are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes within the Department of Business and Professional Regulation. 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 many comparable requirements for the governance of these associations. For example, they delineate requirements for notices of meetings,<sup>1</sup> official records, including which records are accessible to the members of the association,<sup>2</sup> and financial reporting.<sup>3</sup> Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

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<sup>1</sup> See s. 718.112(2), F.S., for condominiums, s. 719.106(2)(c), F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners' associations.

<sup>2</sup> See ss. 718.111(12), 719.104(2), and 720.303(4), F.S.

<sup>3</sup> See ss. 718.111(13), 719.104(4), and 720.303(7), F.S.

Condominium, cooperative, and homeowners associations (collectively, community associations) may be a Florida corporation for profit or a Florida corporation not for profit. If the association is a corporation for profit, the provision of ch. 607, F.S., the Florida Business Corporation Act, apply. If the association is a corporation not for profit, the provisions of ch. 617, F.S., the Florida Not for Profit Corporation Act, apply.<sup>4</sup>

### ***Fines and Penalties***

Community associations may levy fines against members of the association who violate the association's rules or other governing documents.<sup>5</sup> A fine may only be levied after the association has provided the member with notice and a hearing. The hearing must be held before a committee of other members who are not board members or persons residing in the board member's household.<sup>6</sup>

A fine may not exceed \$100 per violation, or \$1,000 in the aggregate.<sup>7</sup> If a member is more than 90 days delinquent on a monetary obligation, the association may suspend his or her right to use common elements, facilities, or areas and may suspend his or her voting rights. If the association member fails to pay a monetary obligation, he or she is barred from being nominated for a seat on the board.<sup>8</sup> If the board member or officer of a condominium association is more than 90 days delinquent on a monetary obligation, the board member or officer is deemed to have abandoned his or her seat on the board.<sup>9</sup>

Section 719.303(5), F.S., provides that when a cooperative association member's voting rights have been suspended, the total number of voting interests of the association must be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action. Chapter 718, F.S., and ch. 720, F.S., do not provide a comparable provision for condominium and homeowners' associations, respectively.

### **Condominiums**

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."<sup>10</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>11</sup> A declaration is like a constitution in that it:

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<sup>4</sup> See ss. 718.111(1)(a), 719.1035, and 720.303(1), F.S.

<sup>5</sup> Sections 718.303(3), 719.303(3), and 720.305(1), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Sections 718.303(3), 719.303(3), and 720.305(2), F.S.

<sup>8</sup> Sections 718.303(4), 719.303(4), and 720.305(3), F.S.

<sup>9</sup> Section 718.112(2)(n), F.S.

<sup>10</sup> Section 718.103(11), F.S.

<sup>11</sup> Section 718.104(2), F.S.

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.<sup>12</sup>

A declaration “may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.”<sup>13</sup> A declaration of condominium may be amended as provided in the declaration.<sup>14</sup> If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not fewer than the owners of two-thirds of the units.<sup>15</sup> Condominiums are administered by a board of directors referred to as a “board of administration.”<sup>16</sup>

Section 718.103(3), F.S., defines the term “association property” to mean that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.

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(13), F.S., defines the term “condominium property” to mean the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

Section 718.103(16), F.S., defines a developer as one “who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business . . . .” There are two classes of developers: those who create the condominium by executing and recording the condominium documents, and those who offer condominium units for sale or lease in the ordinary course of business. Current law excludes a bulk assignee and a bulk buyer from the definition of developer.<sup>17</sup>

### ***Voting***

A condominium association is required to have an annual meeting at which directors are elected.<sup>18</sup> Votes must be cast by written ballot or voting machine.<sup>19</sup> Proxies may not be used in the election.<sup>20</sup> The division’s rules for condominium associations also provide voting and

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<sup>12</sup> *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

<sup>13</sup> Section 718.104(5), F.S.

<sup>14</sup> See s. 718.110(1)(a), F.S.

<sup>15</sup> 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.

<sup>16</sup> Section 718.103(4), F.S.

<sup>17</sup> See *Distressed Condominium Relief Act* discussion below.

<sup>18</sup> Section 718.112(2)(d)1., F.S.; see Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 40-57 (14th. ed.).

<sup>19</sup> Section 718.112(2)(d)4., F.S.

<sup>20</sup> *Id.*

election procedures, such as requiring that paper ballots be mailed in double envelopes.<sup>21</sup> Similar requirements apply to cooperative associations.<sup>22</sup>

### ***Insurance***

Any portion of the condominium property that is damaged by an insurable event must be repaired or replaced by the association as a common expense. If the damage is not the result of an insurable event, the association or the unit owner is responsible for the repair or replacement, as determined by the declaration or bylaws. All property insurance deductibles, uninsured losses, and other damages in excess of property insurance coverage under the property insurance policies maintained by the association are a common expense of the condominium, except for those losses that are the responsibility of the insured.<sup>23</sup>

### ***Assessments and Foreclosures***

Section 718.103(1), F.S., defines the term “assessment” to mean “a share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner.”

“Special assessment” is defined to mean “any assessment levied against a unit owner other than the assessment required by a budget adopted annually.”<sup>24</sup>

A unit owner is jointly and severally liable with the previous owner for all unpaid assessments that come due up to the time of transfer of title.<sup>25</sup> This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.<sup>26</sup>

If a first mortgagee, (e.g., the mortgage lending bank) 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 1 percent of the original mortgage debt, whichever is less.<sup>27</sup> However, this limitation applies only if the first mortgagee joined the association as a defendant in the foreclosure action.<sup>28</sup> This gives the association the right to defend its claims for unpaid assessments in the foreclosure proceeding. A first mortgagee who acquires title to a foreclosed condominium unit is exempt from liability for all unpaid assessments if the first mortgage was recorded prior to April 1, 1992.<sup>29</sup> The successor or assignee, in respect to the first mortgagee, includes only a subsequent holder of the first mortgage.<sup>30</sup>

<sup>21</sup> Rule 61B-23.0021, F.A.C.

<sup>22</sup> Section 719.106(1)(d), F.S., and rule 61B-75.005, F.A.C.

<sup>23</sup> See s. 718.111(11)(j)1.-4., F.S.

<sup>24</sup> Section 718.103(24), F.S.

<sup>25</sup> Section 718.116(1)(a), F.S.

<sup>26</sup> *Id.* The term “without prejudice” means “without 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 770 (2d pocket ed. 2001).

<sup>27</sup> Section 718.116(1)(b), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> Section 718.116(1)(e), F.S.

<sup>30</sup> Section 718.116(1)(g), F.S.

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.<sup>31</sup> If no rate is specified in the declaration, the interest accrues at the rate of 18 percent per year. The association may also charge an administrative late fee of up to the greater of \$25 or 5 percent of each installment of the assessment for each delinquent installment for which the payment is late. Payments are applied first to the interest accrued, then the administrative late fee, then to any reasonable attorney fees incurred in collection, and then to the delinquent assessment.

Section 718.111(4), F.S., permits condominium associations to make and collect assessments and to lease, maintain, repair, and replace the common elements or association property. The association may not charge a use fee against a unit owner for the use of common elements or association property. However, the association may charge a fee against the unit owners for use of common elements or association property if:

- The fee is provided for in the declaration of condominium;
- The fee is authorized by a majority vote of the association; and
- The charges relate to expenses incurred by an owner having exclusive use of the common elements or association property.

### ***Annual Budget***

Section 718.112(2)(f)1., F.S., requires the bylaws of condominium association to include a proposed annual budget of estimated revenues and expenses that must show the amounts budgeted by accounts and expense classification, including, if applicable, but not limited to, those expenses listed in s. 718.504(21), F.S.<sup>32</sup>

### ***Distressed Condominium Relief Act***

The “Distressed Condominium Relief Act”<sup>33</sup> 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. Enacted in 2010,<sup>34</sup> the act was intended to relieve developers, lenders, unit owners, and condominium associations from specified provisions of ch. 718, F.S., including warranty provisions, in order to enable economic opportunities for successor purchasers of distressed condominiums.<sup>35</sup>

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, as a separate instrument recorded in the public records in the county where the

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<sup>31</sup> Section 687.02(2), F.S., prohibits as usurious interest rates that are higher than the equivalent of 18 percent per annum simple interest.

<sup>32</sup> Expenses can include management fees, maintenance, insurance, security provisions. See s. 718.504(21)(c), F.S., for a more detailed list.

<sup>33</sup> Sections 718.701 and 718.708, F.S.

<sup>34</sup> Chapter 2010-174, L.O.F.

<sup>35</sup> See s. 718.702, F.S.

condominium is located, or pursuant to a final judgment or certificate of title at a foreclosure sale.

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 are acquired prior to July 1, 2016. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

### **Cooperative Associations**

Section 719.103(12), F.S., defines a “cooperative” to mean that form of ownership of real property where 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.<sup>36</sup>

### **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.<sup>37</sup>

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, and 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>38</sup> 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.<sup>39</sup>

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<sup>36</sup> See ss. 719.106(1)(g) and 719.107, F.S.

<sup>37</sup> See s. 720.302(1), F.S.

<sup>38</sup> Section 720.301(9), F.S.

<sup>39</sup> Section 720.302(5), F.S.

Homeowners' associations are administered by a board of directors whose members are elected.<sup>40</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 recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.<sup>41</sup> The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.<sup>42</sup>

Homeowners associations are required to hold board of director elections at the annual meeting or as provided in its governing documents.<sup>43</sup> Elections are conducted in accordance with the procedures set forth in the governing documents of the association.<sup>44</sup> Additionally, proxies may be used in the election unless otherwise provided in the governing documents.<sup>45</sup>

### ***Amendments to Governing Documents***

Section 720.306(1)(b), F.S., provides that 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. Generally, a homeowners' association must furnish each member with a copy of an amendment within 30 days after recording; however, in lieu of providing a copy of the recorded amendment, the association may provide notice to members that the amendment was adopted and identify the book and page number or instrument number of the recorded amendment.

### **Division of Florida Condominiums, Timeshares, and Mobile Homes**

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., and ch. 719, F.S., with respect to associations that are still under developer control.<sup>46</sup> The division also has the authority to investigate complaints against developers involving improper turnover or failure to turn over control to the association, pursuant to ss. 718.301, F.S., and 719.301, F.S., respectively.<sup>47</sup> After control of the condominium or cooperative 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.<sup>48</sup>

As part of the division's authority to investigate complaints, ss. 718.501(1), F.S., and 719.501(1), F.S., authorize the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

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<sup>40</sup> See ss. 720.303 and 720.307, F.S.

<sup>41</sup> See ss. 720.301 and 720.303, F.S.

<sup>42</sup> Section 720.303(1), F.S.

<sup>43</sup> Section 720.306(2), F.S.

<sup>44</sup> Section 720.306(9)(a), F.S.

<sup>45</sup> Section 720.306(8), F.S.

<sup>46</sup> Section 718.501(1), F.S., s. 719.501(1), F.S.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*, 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.



### **III. Effect of Proposed Changes:**

#### **Proxy Voting (Section 1)**

The bill amends s. 617.0721(2), F.S., to permit, notwithstanding any provision to the contrary in the articles of incorporation or bylaws, corporations not for profit to use a copy, facsimile, or other reliable reproduction of the original proxy for any purpose for which the original proxy could be used if it is a complete reproduction of the entire proxy.

#### **Condominiums – Insurance (Section 2)**

The bill amends s. 718.111(11)(j), F.S., to provide that, in cases where damage to condominium property is not the result of an insurable event, the maintenance provisions of the declaration or bylaws determine whether the association or the unit owners are responsible for the repair or replacement.

The bill also amends s. 718.111(11)(j), F.S., to delete “uninsured losses” from the list of items that are deemed a common expense of the condominium. It is not clear whether the effect of this provision is that uninsured losses are “damages in excess of property insurance coverage” and thus deemed a common expense of the condominium as provided in this section.

#### **Condominiums – Annual Budget and Developers (Section 3)**

The bill amends s. 718.112(2)(f)2.b., F.S., to clarify that, for the period before turnover of control, the developer’s vote to reduce or waive the funding of reserves is based on the developers voting interests allocated to its units.

The bill also amends s. 718.112(2)(f)1., F.S., to require proposed annual budgets to include, at a minimum, applicable expenses.

#### **Community Associations – Official Records (Sections 2 and 8)**

The bill amends ss. 718.111(12)(a)15. and 719.104(2)(a)13., F.S., to provide that the official records of a condominium and cooperative association, respectively, include all other written records including the list of official records specified in these sections that are related to the operation of the association. Current law does not provide that these records have to be written to be an official record. The provisions in the bill are comparable to the provisions provided in current law for the official records of a homeowners’ association in s. 720.303(4)(l), F.S.

**Community Associations – Assessments and Foreclosures (Sections 4 and 9)**

The bill amends ss. 718.116(3) and 719.108(3), F.S., to provide that the priority for application of payments in this subsection applies notwithstanding s. 673.3111, F.S.,<sup>49</sup> or any purported accord and satisfaction. This statement of application is intended to clarify existing law.

The bill amends s. 718.116(5)(b), F.S., to permit the condominium association to file a lien on unpaid administrative late fees.

**Community Associations – Electronic Voting (Sections 5, 10, and 16)**

The bill creates ss. 718.128, 719.129, and 720.317, F.S., to provide that condominium, cooperative, and homeowners' associations, respectively, may elect to conduct elections through an Internet-based online voting system in the manner provided in these provisions. Each unit owner must consent, in writing, to online voting.

The association must provide each unit owner with a method to:

- Authenticate the unit owner's identity to the online voting system;
- For elections of the board, to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot; and
- Confirm, at least 14 days before the voting deadline, that the unit owner's electronic device can successfully communicate with the online voting system.

In addition, an online voting system must be able to:

- Authenticate the unit owner's identity;
- Authenticate the validity of each electronic ballot to ensure that the ballot is not altered in transit;
- Transmit a receipt from the online voting system to each unit owner who casts an electronic ballot;
- Permanently separate any authentication or identifying information from the electronic ballot, rendering it impossible to tie a ballot to a specific unit owner; and
- Store and keep electronic ballots accessible to election officials for recount, inspection, and review purposes.

Unit owners who vote electronically must be counted as being in attendance at the meeting for purposes of determining a quorum.

Substantive votes are limited to only the issues specifically identified in the electronic vote when a quorum is established based on unit owners voting electronically.

These provisions apply to an association that provides for and authorizes an online voting system by a board resolution. The board resolution must provide that unit owners receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and

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<sup>49</sup> Section 673.3111, F.S., relates to accord and satisfaction by negotiable instrument, which provides the method for resolving a dispute on a debt with a statement on the negotiable instrument to the effect that the instrument was tendered as full satisfaction of the claim.

deadlines for unit owners to consent in writing to online voting, and must establish reasonable procedures and deadlines for unit owners to opt out of online voting after giving consent. Written notice of a meeting at which the resolution will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property or association property at least 14 days before the meeting. Evidence of compliance with the 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association. A unit owner's consent to online voting is valid until the unit owner opts out of online voting according to the procedures established by the board of administration. Except for timeshare condominium and cooperative associations, these electronic voting provision may apply to any matter that requires a vote of the membership.

### **Community Associations – Fines and Penalties (Sections 6, 11, 14, and 15)**

The bill amends ss. 718.303(3), 719.303(3), and 720.305(2)(b), F.S., to revise the fine and penalty provisions for condominium, cooperative, and homeowners' associations, respectively. The bill provides that it is the board of the association that levies any fines and that the role of the impartial committee is limited to determining whether to confirm or reject the fine or suspension levied by the board.

The bill amends s. 719.303(3)(b), F.S., to provide that neither board members of the cooperative association nor persons residing in the board member's household may sit on the committee that is responsible for confirming or rejecting a fine or suspension levied by the board.

The bill also amends s. 718.303(5) and 720.305(4), F.S., to provide that, when an owner or member's voting rights have been suspended in a condominium or homeowners' association, the total number of voting interests of the association must be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action. The suspended voting interests may not be used for any purpose, including determining the number necessary to establish a quorum. This provision is comparable to the current restriction in s. 719.303(5), F.S., for members of a cooperative association.

For condominium and homeowners' associations, the bill provides that any suspensions imposed apply even if the suspensions arose from less than all of the units or parcels owned by the member. There is no comparable provision for cooperative associations.

The bill also amends s. 720.306(9)(b), F.S., to provide that an association member's failure to pay a fee, fine, or other monetary obligation bars him or her from being nominated for the board, and, if he or she is currently a board member, failure to pay after 90 days results in abandonment of his or her seat on the board. This provision is comparable to the current restriction in s. 718.112(2)(n), F.S., for members of a condominium board.

The bill amends s. 720.305(2), F.S. to provide that a homeowners association may not levy a fine in excess of \$100 unless otherwise provided for in the governing documents.

**Distressed Condominium Relief Act (Section 7)**

The bill amends s. 718.707, F.S., to extend the date before which condominium parcels must be purchased to qualify as a bulk assignee or bulk buyer to July 1, 2018 from July 1, 2016.

**Homeowners' Associations – Governing Documents (Section 12)**

The bill amends s. 720.301(8), F.S., to revise the definition of the term “governing documents,” to include the rules and regulations adopted under the authority of the associations’ declaration, articles of incorporation, or bylaws.

**Homeowners' Association Act (Section 13)**

The bill creates s. 720.3015, F.S., to provide that ch. 720, F.S., may be cited as the “Homeowners’ Association Act.”

**Homeowners' Associations - Amendments to Governing Documents (Section 15)**

The bill amends s. 720.306(1)(b), F.S., to provide that the association’s failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

**Effective Date (Section 17)**

The bill provides an effective date of July 1, 2015.

**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:**

The bill permits community associations to file a lien on unpaid administrative late fees.

**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: 617.0721, 718.111, 718.112, 718.116, 718.303, 718.707, 719.104, 719.108, 719.303, 720.301, 720.3015, 720.305, and 720.306.

This bill creates the following sections of the Florida Statutes: 718.128, 719.129, and 720.317.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS/CS/CS by Fiscal Policy on April 20, 2015:**

The committee substitute:

- Does not create s. 718.103(12), F.S., to define the term “condominium documents;”
- Does not amend s. 718.103(16), F.S., to revise the definition of the term “developer;”
- Does not amend s. 718.111(4), F.S., to provide that the association may charge a fee against the unit owners for use of common elements or association property if the fee is authorized by a majority vote of the voting interests present, in person or by proxy, at a meeting of the association in which a quorum has been established;
- Does not amend ss. 718.112(2)(c) and (d), 719.106(1)(c) and (d), and 720.306(10), F.S., to provide that association members may not post tape or video recordings of meetings of the board or of the membership on any website or other media that can be readily viewed by persons who are not members of the association;
- Does not amend s. 718.112(2)(d), F.S., to permit condominium associations to post meeting notices on association property in addition to condominium property;
- Does not amend ss. 718.112(2)(d)8., 719.106(1), 720.303, F.S., to delete the requirement that the community association bylaws must provide for electronic notice to the owners in order to use such notice;
- Does not amend s. 718.113(7), F.S., to replace the term “governing documents” with the term “condominium documents;”
- Does not amend ss. 718.116(1)(a) and (b), F.S., to provide that a condominium unit owner is liable for any special assessments or installments on special assessments coming due during his or her period of ownership, regardless of when it was levied, and to set forth the liability of the unit owner and the previous unit owner for all

- interest, late fees, costs, and reasonable attorney fees incurred by the association in collecting unpaid assessments up to the time of transfer of title;
- Does not amend ss. 718.116(3), 719.108, and 720.3085, F.S., to permit community associations to recover from the unit owner any reasonable charges imposed upon the association under a written contract with its management or bookkeeping company or collection agent, incurred in connection with collecting a delinquent assessment;
  - Does not create ss. 718.116(5)(b), 719.108(4), 720.3085, F.S., to permit the condominium association to file a lien on unpaid reasonable costs for collection services contracted by the associations;
  - Does not provide in ss. 718.128, 719.129, and 720.317, F.S., that the requirement that the electronic voting system must be able to permanently separate any authentication or identifying information from the electronic ballot is limited to elections of the board of administration;
  - Does not amend s. 718.301(1), F.S., to include additional events that trigger transfer of control from the developer to the non-developer unit owners;
  - Does not amend s. 718.301(4), F.S., to apply the post-turnover requirements in this section to bulk-unit purchasers, including requirements for the relinquishment of specified records;
  - Does not amend s. 718.302(2), F.S., to prohibit a lender-unit purchaser from voting on the cancellation of a contract made by the association while the association is under control of that lender-unit purchaser, and to provide for the voting rights of a lender-unit purchaser or a bulk-unit purchaser as they relate to the voting rights of the developer in various ownership situations;
  - Does not amend ss. 718.303(3) and 719.303(3), F.S., to provide that neither the board's authorized designee nor persons residing in the home of the board's designee may sit on the impartial committee responsible for confirming or rejecting a fine or suspension levied by the board;
  - Amends s. 718.707, F.S., to extend the date before which condominium parcels purchased to qualify as a bulk assignee or bulk buyer to July 1, 2018 from July 1, 2016;
  - Does not amend s. 718.501, F.S., to provide that the Department of Business and Professional Regulation has jurisdiction and regulatory authority over bulk-unit purchasers and lender-unit purchasers;
  - Does not create s. 718.709, F.S., to provide that ss. 718.701-718.108, F.S., the Distressed Condominium Relief Act, apply to title to units acquired on or after July 1, 2010, but before July 1, 2016; and
  - Does not create part VIII of ch. 718, F.S., consisting of ss. 718.801-718.813, F.S., entitled "Bulk-Unit Purchasers and Lender-Unit Purchasers," to provide for the regulation of bulk-unit purchasers and lender-unit purchasers of condominium units;

**CS/CS by Judiciary on April 7, 2015:**

- Removes a section from the bill which related to the ad valorem tax applicable to a unit or parcel that is transferred to a community association in lieu of foreclosure;
- Deletes the requirement that the charges for costs incurred in connection with collecting a delinquent assessment be in a liquidated and non-contingent amount;

- Deletes a requirement that the condominium, cooperative, or homeowners' association bylaws provide for electronic notice to the owners in order to use such notice;
- Deletes the requirement that the bylaws must provide for online voting, and replaces it with a requirement that the Board adopt a resolution to allow online voting; and
- Requires that owners consent to online voting for it to be used.

**CS by Regulated Industries on March 18, 2015:**

The committee substitute (CS) amends s. 201.02(9), F.S., to provide that a document that transfers property to a condominium, cooperative, or homeowners' associations, or vacation and timeshare management or owners' association in lieu of foreclosure of an assessment lien is subject to documentary stamp tax based solely on the amount of unpaid assessments on the date of the transfer.

The CS creates s. 718.103(12), F.S., to define the term "condominium documents." It also amends s. 718.103(16), F.S., to exclude from the definition of the term "developer" bulk-unit purchasers and lender-unit purchasers. It also excludes from the definition persons who own seven or fewer units operated by an association consisting of 40 or fewer units or who own less than 20 percent of the units operated by an association consisting of more than 40 units, and the trustee and any related trust association of a timeshare trust.

The CS amends s. 718.111(11)(j), F.S., to provide that in cases where the damage is not the result of an insurable event, the maintenance provisions of declaration or bylaws determine whether the association or the unit owners are responsible for the repair or replacement. It also amends this section to delete uninsured losses from the list of items that are deemed a common expense of the condominium.

The CS amends s. 718.112(2)(f)2.b., F.S., to clarify that, for the period before turnover of control, the developer's vote to reduce or waive the funding of reserves is based on the developers voting interests allocated to its units.

The CS amends s. 718.113(7), F.S., to replace the term "governing documents" with the term "condominium documents."

The CS amends s. 718.116(3), F.S., to include s. 673.3111, F.S., or any purported accord and satisfaction in the list of matters that this order for applying payments is notwithstanding.

The CS creates ss. 718.128, 719.129, and s. 720.317, F.S., to provide that a condominium, cooperative, and homeowners' association, respectively, may elect to conduct elections by electronic voting in the manner provided.

The CS amends s. 718.301(1), F.S., to include three additional events that trigger transfer of control from the developer to the non-developer unit owners, and to apply the post-turnover requirement to bulk-unit purchasers.

The CS amends s. 718.302, F.S., to prohibit a lender-unit purchaser from voting on the cancellation of a contract, grant, reservation made by the association while the association is under control of that lender-unit purchaser. It also amends s. 718.302, F.S., relating to the rights of the developer unit owner to vote on making and cancelling agreements, to include the voting interests of the lender-unit purchasers and the bulk-unit purchasers juxtaposed to the voting rights of the developer.

The CS amends ss. 718.303, 719.303, 720.305, and 720.306, F.S., to revise the fine and penalty provisions for condominium, cooperative, and homeowners' associations.

The CS amends s. 718.501, F.S., to provide that the department has jurisdiction and regulatory authority over bulk-unit purchasers and lender-unit purchasers.

The bill creates s. 718.709, F.S., to provide that ss. 718.701-718.108, F.S., apply to title to units acquired on or after July 1, 2010, but before July 1, 2016.

The CS creates part VIII of ch. 718, F.S., consisting of ss. 718.801-718.812, F.S., entitled "Bulk-Unit Purchasers and Lender-Unit Purchasers."

The CS amends s. 720.301, F.S., to revise the definition of the term "governing documents," to include the rules and regulations adopted under the authority of the association's declaration, articles of incorporation, or bylaws.

The CS creates s. 720.3015, F.S., to provide that ch. 720, F.S., may be cited as the "Homeowners' Association Act."

**B. Amendments:**

None.