

**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/SB 748

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

SUBJECT: Residential Properties

DATE: April 17, 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>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

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.

Regarding condominium associations, the bill permits the association to 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. Current law authorizes such a vote but does not specify that it can be by proxy. Currently, the vote must be by vote of the association (majority of the membership). The bill also provides additional events that trigger the transfer of control of a condominium board of administration from a developer to unit owners other than the developer.

The bill provides the duties and rights of bulk-unit purchasers and lender-unit purchasers of condominium units and parcels, and provides protections for the interests of other lenders, unit owners, and condominium associations.

Regarding condominium, cooperative, and homeowners' associations, the bill provides that association members may not post tape or video recordings of a meeting of the board or a meeting of the membership on any website or other media that can be readily viewed by persons who are not members of the association. The bill prohibits designees of the board and persons who reside with the designee of the board from sitting on the committee charged with reviewing fines and penalties against members of the association. The bill also creates a mechanism for online voting in condominium, cooperative, and homeowners' associations.

Regarding condominium associations, the bill permits condominium associations to post meeting notices on association property in addition to condominium property.

Regarding condominium, cooperative, and homeowners' associations, the bill permits associations to recover from the unit owner any reasonable charges imposed upon the association under a written contract with its management, bookkeeping company, or collection agent, incurred in connection with collecting a delinquent assessment. The bill specifies the order in which payments from a homeowner must be applied to his or her unpaid debts. The bill also permits the associations to file a lien on unpaid authorized administrative late fees, and reasonable costs for collection services contracted by the associations.

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. It provides that a homeowners' association member that fails to pay a fine may be suspended from the board of directors or barred from running for a seat on the board. It also provides that a homeowners' association's failure to provide notice of the recording of an 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:**

### **Documentary Stamp Tax**

Section 201.02(1), F.S., imposes the documentary stamp tax on documents that transfer an interest in Florida real property. The tax is calculated based on the "consideration" of the transfer. Consideration includes money paid or to be paid, the discharge of an obligation, and the amount of any mortgage or other encumbrance. The current tax is \$0.70 for each \$100 of consideration.

Subsections 201.02(6) through (9), F.S., provide exemptions and limitations on the imposition of the documentary stamp tax, including certain judicial sales of real property under a foreclosure order. Currently, there is no exemption or limitation for a transfer in lieu of foreclosure of an assessment lien when the property is transferred to a condominium, cooperative, or homeowners' association, or to a vacation or timeshare plan.

### **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."

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***

Condominium, cooperative, and homeowners' 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

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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.

<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.

not provide a comparable provision for condominium and homeowners' associations, respectively.

### ***Meetings***

Condominium, cooperative, and homeowners' association members have the right to attend meetings of the board and its committees and the right to speak at such meetings. Any member may tape record or videotape meetings of the board.<sup>10</sup>

### **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>11</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>12</sup> 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.<sup>13</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>14</sup> A declaration of condominium may be amended as provided in the declaration.<sup>15</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>16</sup> Condominiums are administered by a board of directors referred to as a "board of administration."<sup>17</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.

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<sup>10</sup> Sections 718.112(2)(c), 719.106(1)(c), and 720.306(10), F.S.

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

<sup>12</sup> Section 718.104(2), F.S.

<sup>13</sup> *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

<sup>14</sup> Section 718.104(5), F.S.

<sup>15</sup> See s. 718.110(1)(a), F.S.

<sup>16</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>17</sup> Section 718.103(4), F.S.

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>18</sup>

### ***Voting***

A condominium association is required to have an annual meeting at which directors are elected.<sup>19</sup> Votes must be cast by written ballot or voting machine.<sup>20</sup> Proxies may not be used in the election.<sup>21</sup> The division’s rules for condominium associations also provide voting and election procedures, such as requiring that paper ballots be mailed in double envelopes.<sup>22</sup> Similar requirements apply to cooperative associations.<sup>23</sup>

A homeowners association is also required to hold board of director elections at its annual meeting or as provided in its governing documents.<sup>24</sup> Elections are conducted in accordance with the procedures set forth in the governing documents of the association.<sup>25</sup> Additionally, proxies may be used in the election unless otherwise provided in the governing documents.<sup>26</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>27</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.”

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<sup>18</sup> See *Distressed Condominium Relief Act* discussion below.

<sup>19</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>20</sup> Section 718.112(2)(d)4., F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Rule 61B-23.0021, F.A.C.

<sup>23</sup> Section 719.106(1)(d), F.S., and rule 61B-75.005, F.A.C.

<sup>24</sup> Section 720.306(2), F.S.

<sup>25</sup> Section 720.306(9)(a), F.S.

<sup>26</sup> Section 720.306(8), F.S.

<sup>27</sup> See s. 718.111(11)(j)1.-4., F.S.

“Special assessment” is defined to mean “any assessment levied against a unit owner other than the assessment required by a budget adopted annually.”<sup>28</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>29</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>30</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>31</sup> However, this limitation applies only if the first mortgagee joined the association as a defendant in the foreclosure action.<sup>32</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>33</sup> The successor or assignee, in respect to the first mortgagee, includes only a subsequent holder of the first mortgage.<sup>34</sup>

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>35</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.

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<sup>28</sup> Section 718.103(24), F.S.

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

<sup>30</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>31</sup> Section 718.116(1)(b), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> Section 718.116(1)(e), F.S.

<sup>34</sup> Section 718.116(1)(g), F.S.

<sup>35</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.

### ***Annual Budget and Developer Control***

Section 718.112(2)(f)2., F.S., provides that, before the developer has relinquished control of the board to the non-developer unit owners, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e), F.S., or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. After that period, reserves may be waived or reduced only upon the vote of a majority of all non-developer voting interests voting in person or by limited proxy at a duly called meeting of the association.

### ***Transfer of Control***

Section 718.301, F.S., requires that the control of a condominium association must be turned over to the non-developer unit owners upon the occurrence of specified events, including 3 years after 50 percent of the units have been conveyed, when some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer, or when the developer files a petition seeking bankruptcy protection.

### ***Agreements Entered into by the Association***

Section 718.302, F.S., provides that contracts for the operation, maintenance, or management of a condominium association entered into by a developer and contracts that require the association to purchase condominium property or lease condominium property to another party are subject to cancellation by non-developer unit owners once certain conditions are met.

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

The “Distressed Condominium Relief Act”<sup>36</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>37</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>38</sup>

Section 718.703(1), F.S., defines the term “bulk assignee” to mean a person who acquires more than 7 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 condominium is located, or pursuant to a final judgment or certificate of title at a foreclosure sale.

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<sup>36</sup> Sections 718.701 and 718.708, F.S.

<sup>37</sup> Chapter 2010-174, L.O.F.

<sup>38</sup> See s. 718.702, F.S.

Section 718.703(2), F.S., defines the term “bulk buyer” as a person who acquires more than 7 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.

### ***Developer Warranties***

Section 718.203, F.S., provides that a developer grants an implied warranty of fitness and merchantability as to each unit, improvements, personal property, and other components associated with the sale of a unit.

### **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>39</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>40</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>41</sup> Unless specifically stated to the contrary, homeowners’

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<sup>39</sup> See ss. 719.106(1)(g) and 719.107, F.S.

<sup>40</sup> See s. 720.302(1), F.S.

<sup>41</sup> Section 720.301(9), F.S.



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>42</sup>

Homeowners' associations are administered by a board of directors whose members are elected.<sup>43</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>44</sup> The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.<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>42</sup> Section 720.302(5), F.S.

<sup>43</sup> See ss. 720.303 and 720.307, F.S.

<sup>44</sup> See ss. 720.301 and 720.303, F.S.

<sup>45</sup> Section 720.303(1), 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**

The bill (section 1) 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 – Definitions**

The bill (section 2) creates s. 718.103(12), F.S., to define the term “condominium documents” to mean all duly adopted and recorded amendments, supplements, and exhibits of the declaration; the recorded articles of incorporation and bylaws; duly adopted and recorded amendments of the declaration; and rules and regulations.

The bill (section 5) amends s. 718.113(7), F.S., to replace the term “governing documents” with the term “condominium documents.”

The bill (section 2) amends the definition of the term “developer” in s. 718.103(16), F.S., to exclude bulk-unit purchasers and lender-unit purchasers to reflect their creation and regulation in the bill (section 12). The bill also excludes from the definition of “developer”:

- A person who owns 7 or fewer units operated by an association consisting of 40 or fewer units or who owns 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.

#### **Condominiums – Assessments for Use of Common Elements.**

The bill (section 3) amends 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.

#### **Condominiums – Insurance**

The bill (section 3) 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.

**Community Associations – Official Records**

The bill amends ss. 718.111(12)(a)15. (section 2) and 719.104(2)(a)13. (section 14), 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 an homeowners' association in s. 720.303(4)(1), F.S.

**Community Associations – Recording Meetings**

The bill (section 4) amends s. 718.112(2)(c) and (d), 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.

The bill also amends s. 719.106(1)(c) and (d), F.S., for cooperatives (section 15), and s. 720.306(10), F.S., for homeowners' associations (section 23), to provide a comparable provision for recording of cooperative and homeowners' association board and member meetings.

**Community Associations – Meeting Notices**

The bill (section 4) amends s. 718.112(2)(d), F.S., to permit condominium associations to post meeting notices on association property in addition to condominium property. It also repeals a requirement that the condominium, cooperative, or homeowners' association bylaws provide for electronic notice to the owners in order to use such notice. (section 4, s. 718.112(2), F.S.; section 15, s. 719.106(1), F.S.; and section 21, s. 720.303, F.S., respectively).

**Condominium – Annual Budget and Developers**

The bill (section 4) 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.

**Community Associations – Assessments and Foreclosure**

The bill (section 6) amends s. 718.116(1)(a),(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. It also provides that a unit owner is jointly and severally liable with 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. It provides that the joint and several liability does not apply to an owner who acquires title through purchase of a tax deed. The bill also limits the liability of a first mortgagee or its successor or assignee who acquires title to a unit by foreclosure or by deed in lieu of foreclosure for unpaid interest, late fees, costs and reasonable attorney fees, and any other fee, cost, or expense incurred by the association in the collection process.

The bill amends ss. 718.116(3), 719.108 (section 16), and 720.3085 (section 24), F.S., to permit condominium, cooperative, and homeowners' 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.

The provision applies to collection charges that are based on the actual time expended performing necessary, non-duplicative services. The association may not recover fees for collection services for the period after the matter has been referred to the association's legal counsel. Any payment received from the unit owner must be applied in the following order: first to the interest accrued, then the administrative late fee, then costs and reasonable attorney fees incurred in collection, then the bill adds the payment for any reasonable costs for collection services contracted by the association, and then to the delinquent assessment. The bill provides that this payment priority 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 authorized administrative late fees and reasonable costs for collection services contracted by the associations.

### **Community Associations – Electronic Voting**

The bill creates ss. 718.128 (section 7), 719.129 (section 17), and 720.317 (section 25), 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;
- Able to authenticate the validity of each electronic ballot to ensure that the ballot is not altered in transit;
- Able to transmit a receipt from the online voting system to each unit owner who casts an electronic ballot;

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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.

- For elections of the board of administration, able to permanently separate any authentication or identifying information from the electronic ballot, rendering it impossible to tie a ballot to a specific unit owner; and
- Able to 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 statutes 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 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. These statutes may apply to any matter that requires a vote of the unit owners.

### **Condominiums – Transfer of Developer Control**

The bill (section 8) amends s. 718.301(1), F.S., to include the following additional events that trigger transfer of control from the developer to the non-developer unit owners:

- When a bulk-unit purchaser who owns a majority of the units files a bankruptcy petition;
- When a receiver for a bulk-unit purchaser who owns a majority of the units is appointed by a circuit court and is not discharged within 30 days after such appointment; and
- Five years after the date of recording of the first conveyance to a bulk-unit purchaser that owns a majority of the units.

The bill also amends 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.

### **Condominiums – Agreements Entered into by the Association**

The bill (section 9) amends 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. It also provides 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.

### **Community Associations – Fines and Penalties**

The bill amends ss. 718.303 (section 10), 719.303 (section 18), and 720.305 (section 22), F.S., to revise the fine and penalty provisions for condominium, cooperative, and homeowners' associations, respectively. The board of the association is to levy any fines and an impartial committee is to be formed solely for the purpose of determining whether to confirm or reject the fine or suspension recommended by the board. Neither the board's authorized designee nor persons residing in the home of the board's designee may sit on the committee.

With regard to condominium and homeowners' associations, when an owner or 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. This provision is comparable to the restriction on voting by a suspended member of a cooperative association in existing s. 719.303(5), F.S.

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

The bill (section 23) 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.

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

This bill (section 11) amends s. 718.501, F.S., to provide that the department has jurisdiction and regulatory authority over bulk-unit purchasers and lender-unit purchasers.

### **Distressed Condominium Relief Act**

The bill (section 12) creates 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 (the effective date of the act), but before July 1, 2016 (the final date for classification as a bulk buyer or bulk assignee).

### **Condominiums - Bulk-Unit Purchasers and Lender-Unit Purchasers**

The bill (section 13) creates Part VIII of ch. 718, F.S., consisting of ss. 718.801-718.813, F.S., entitled "Bulk-Unit Purchasers and Lender-Unit Purchasers."

New s. 718.801, F.S., provides a statement of legislative intent that it is the public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to bulk-unit purchasers or lender-unit purchasers of condominium units and that

there is a need to balance such interests by limiting the applicability of the Distressed Condominium Relief Act.

### ***Definitions***

The bill creates s. 718.802, F.S., to define the terms “bulk assignee,” “bulk-unit purchaser,” “bulk buyer,” and “lender-unit purchaser.”

The definition of “bulk assignee” is similar to the definition of that term under the Distressed Condominium Relief Act.

“Bulk-unit purchaser” is defined as a person who acquires title to the greater of at least eight units or 20 percent of the units that ultimately will be operated by the same association. A person who acquires units or timeshare interests in a condominium that will be included in a timeshare plan, may elect to be a bulk-unit purchaser. The term does not include a purchaser who acquired title to defraud or harm a purchaser, unit owner, or the association; where the acquirer would be an insider of the bulk-unit purchaser or the developer; or where the acquisition is a fraudulent transfer under ch. 726, F.S.

“Bulk buyer” is defined as a person who acquired parcels as a bulk buyer under the Distressed Condominium Relief Act. The term also includes a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of any developer rights or receives only some or all of the specified rights. The rights include:

- The right to conduct sales, leasing, and marketing activities within the condominium;
- The right to be exempt from the payment of working capital contributions to the condominium association; and
- The right to be exempt from any rights of first refusal.

“Lender-unit purchaser” is defined as a mortgagee, who holds a mortgage from a developer or bulk-unit purchaser, who subsequently obtains title to the units through foreclosure or deed in lieu of foreclosure, and who elects to become a lender-unit purchaser by providing written notice of the election to the condominium association.

### ***Developer Rights of Bulk-Unit Purchasers and Lender-Unit Purchasers***

The bill creates s. 718.803, F.S., relating to the developer rights of bulk-unit purchasers and lender-unit purchasers. Generally, a lender-unit purchaser may exercise any developer rights that the lender-unit purchaser acquires. However, a bulk-unit purchaser may only exercise the following developer rights, provided they are contained in the condominium declaration:

- The right to conduct sales, leasing, and marketing activities within the condominium;
- The right to assign limited common elements and use rights to common elements and association property which were not assigned before the bulk-unit purchaser acquired title; and
- For a phase condominium, the right to add phases.

If a bulk-unit purchaser exercises developer rights other than those specified, it is no longer deemed to be a bulk-unit purchaser.

The bill also provides a time-frame by which a bulk-unit purchaser must pay a working capital contribution to the association in situations where the initial purchaser of a unit from the developer is required to make a working capital contribution to the association.

#### ***Compliance with Existing Sales and Reservation Laws***

The bill creates s. 718.804, F.S., to require bulk-unit purchasers and lender-unit purchasers to comply with the requirements of s. 718.202, F.S.,<sup>50</sup> and part V of ch. 718, F.S.,<sup>51</sup> in connection with any units they own or sell.

#### ***Voting Rights Related to Funding of Reserves***

The bill creates s. 718.805, F.S., to provide that for the first 2 years following the first conveyance of a unit to a bulk-unit purchaser or lender-unit purchaser, the bulk-unit purchaser or lender-unit purchaser may vote the voting interests allocated to its units to waive reserves or reduce the funding of reserves. After these 2 years, the bulk-unit purchaser or lender-unit purchaser may not make such votes until it holds less than a majority of the voting interests in the association.

#### ***Assessment Liability and Election of Directors***

The bill creates s. 718.806, F.S., relating to the liability of bulk-unit purchasers and lender-unit purchasers for assessments. A bulk-unit purchaser is liable for all assessments on its units that become due while it holds title to the units. The bulk-unit purchaser is jointly and severally liable with the previous owner for all unpaid assessments which became due before the acquisition of title, for all other monetary obligations accrued which are secured by the association's lien, and for all costs advanced by the association for the maintenance and repair of the units acquired by the bulk-unit purchaser.

A lender-unit purchaser's liability for assessments for the units the lender-unit purchaser owns is limited to the lesser of the units' unpaid regular assessments that accrued during the 12 months immediately preceding the lender-unit purchaser's acquisition of title or one percent of the original mortgage debt.

The lender-unit purchaser acquiring title must comply with s. 718.116(1)(c), F.S., which requires that the person acquiring title must pay the amount owed to the association within 30 days after transfer of title.

#### ***Amendments and Material Alterations***

The bill creates s. 718.807, F.S., to provide that the following amendments or alterations may not be made unless they are approved by a majority vote of unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser:

- An amendment related to the configuration of a unit or to create a timeshare;
- An amendment creating, changing, or terminating leasing restrictions;

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<sup>50</sup> Section 718.202, F.S., relates to sales or reservation deposits made prior to closing.

<sup>51</sup> Part V of ch. 718, F.S., regulates sales and disclosures prior to sales of residential condominiums.



- An amendment of the declaration pertaining to the condominium's status as housing for older persons;
- An amendment related to reclassification as a limited common element; and
- Material alterations to the common elements or association property any time a bulk-unit purchaser, a lender-unit purchaser, developer, or a combination thereof owns a percentage of voting interests equal to or greater than the percentage required to approve the amendment.

The bill requires consent of the developer, a bulk-unit purchaser, or a lender-unit purchaser for an amendment that would otherwise require the approval of their voting interests as required by the declaration, articles of incorporation, bylaws, or current law.

### ***Warranties and Disclosures***

The bill creates s. 718.808, F.S., related to the warranties and disclosures that bulk-unit purchasers and lender-unit purchasers are required to provide. A bulk-unit purchaser or lender-unit purchaser grants an implied warranty of fitness and merchantability to a purchaser of each unit sold for a period of 3 years, which begins on the date of the completion of repairs or improvements that the bulk-unit purchaser or lender-unit purchaser makes to the unit, common elements, or limited common elements.

The bill tolls the statute of limitations in s. 718.203, F.S., which provides the applicable periods for warranties granted by the developer, while the bulk-unit purchaser begins the process of appointing or electing a majority of the board.

A bulk-unit purchaser or lender-unit purchaser must include a disclosure to purchasers on any sales contract that states that the seller is not the developer of the condominium for any purpose under ch. 718, F.S. A lender-unit purchaser must also disclose that it took title to the units being sold by foreclosure or deed in lieu of foreclosure.

At or before the signing of a contract to sell a unit, a bulk-unit purchaser or lender-unit purchaser must provide a condition report to the prospective purchaser. The condition report must include a reasonably detailed description of the repairs or replacements necessary to cure construction defects identified in the report. The report must be prepared before the bulk-unit purchaser or the lender-unit purchaser enters into its first sales contract, but not more than 6 months before the first sales contract is agreed upon. It must be updated no later than 1 year after the first closing and each year thereafter.

If during the course of preparing the condition report the architect or engineer becomes aware of a component that violates an applicable building code or law or that deviates from the building plans, the architect or engineer must disclose such information in the report. The architect or engineer must make written inquiry to the applicable local government of any building code violations and include in the condition report the government's response or failure to respond.

If a condition report is not provided to a purchaser, the bulk-unit purchaser or lender-unit purchaser grants implied warranties of fitness and merchantability, which are not limited to the construction, improvements, or repairs that it undertakes to the condominium.

***Joint and Several Liability***

The bill creates s. 718.809, F.S., to provide that for the purposes of ch. 718, F.S., if there are multiple bulk-unit purchasers, the units owned by the bulk-unit purchasers and the rights of the bulk-unit purchasers will be aggregated as if there were only one bulk-unit purchaser. Each bulk-unit purchaser is jointly and severally liable with his or her predecessor bulk-unit purchasers for compliance with the chapter.

***Construction Disputes***

The bill creates s. 718.810, F.S., to provide that a condominium board of administration composed of a majority of directors elected or appointed by a bulk-unit purchaser may not resolve a construction dispute that is subject to ch. 558, F.S.,<sup>52</sup> unless the resolution is approved by a majority of the voting interests of the unit owners other than the developer and a bulk-unit purchaser.

***Noncompliance***

The bill creates s. 718.811, F.S., to provide that a bulk-unit purchaser or a lender-unit purchaser who fails to comply with the requirements of ch. 718, F.S., relating to the obligations and rights of bulk-unit purchasers and lender-unit purchasers, forfeits all protections provided under the Condominium Act.

***Documents to be Delivered upon Turnover***

The bill creates s. 718.812, F.S., to provide that when a bulk-unit purchaser is no longer entitled to elect the majority of the board, the bulk-unit purchaser must deliver all of the items specified in s. 718.301(4), F.S., that are in the bulk-unit purchaser's possession to the association. The bulk-unit purchaser must try to get turnover materials from the original developer and must list materials that it was unable to obtain.

***Timeshare Condominiums***

The bill creates s. 718.813, F.S., to provide that, with respect to acquisition of units or timeshare interests that are ultimately to be included in a timeshare plan under ch. 721, F.S., a person who is otherwise qualified to be a bulk-unit purchaser is only a bulk-unit purchaser if the person elects to be by providing notice to the condominium association. Additionally, when selling units or timeshare interests, the bulk-unit purchaser must disclose to buyers that the seller is not the developer of the condominium for any purpose under the Condominium Act.

***Homeowners' Associations – Governing Documents***

The bill (section 19) 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 associations’ declaration, articles of incorporation, or bylaws.

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<sup>52</sup> Chapter 558, F.S., provides for presuit notice and an opportunity to cure construction defects.

**Homeowners' Association Act**

The bill (section 20) 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**

The bill (section 23) 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**

The bill (section 26) 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.

**D. Other Constitutional Issues:**

The bill prohibits members of a community association from posting 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. This provision may raise free speech issues under the First Amendment of the U.S. Constitution and Article I, Section 4 of the Florida Constitution, which guarantee freedom of speech and promote the free exchange of ideas and information by prohibiting the government from restricting speech because of its content. Prior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights. As such, prior restraints are presumed unconstitutional. Therefore, only in "exceptional cases," will the courts consider censorship of publication acceptable.<sup>53</sup>

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

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<sup>53</sup> See *Post-Newsweek Stations Orlando, Inc. v. Guetzloe*, 968 So.2d 608, 610 (Fla. 5th DCA 2007).

**B. Private Sector Impact:**

The bill permits community associations to recover from their members fees for collection services and to file a lien on unpaid authorized administrative late fees, and reasonable costs for collection services contracted by the associations.

**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, 718.103, 718.111, 718.112, 718.113, 718.116, 718.301, 718.302, 718.303, 718.501, 719.104, 719.106, 719.108, 719.303, 720.301, 720.3015, 720.303, 720.306, and 720.3085.

This bill creates the following sections of the Florida Statutes: 718.128, 718.709, 718.801, 718.802, 718.803, 718.804, 718.805, 718.806, 718.807, 718.808, 718.809, 718.810, 718.811, 718.812, 718.813, 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 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 noncontingent 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.