

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 791	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Finance & Tax Committee; Civil Justice Subcommittee; Moraitis; Fitzenhagen and others	98 Y's	17 N's
COMPANION BILLS:	CS/CS/CS/SB 748	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 791 passed the House on April 22, 2015, and subsequently passed the Senate on April 24, 2015. The bill includes CS/CS/CS/HB 1211. The bill amends similar statutes relating to condominiums, cooperatives, and homeowners' associations (collectively referred to as "residential properties").

Specifically, the bill:

- regulates the order of application of payments received by a condominium or cooperative association for past due assessments;
- revises provisions related to fines and penalties assessed by associations;
- provides that a homeowners' association may only levy fines up to \$100, unless otherwise provided in the association's governing documents;
- 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 the board;
- creates a mechanism for electronic voting of the membership of a condominium, cooperative, or homeowners' association, provided that the association's board adopts a resolution to allow for electronic voting;
- authorizes a condominium, cooperative, or homeowners' association to provide electronic notice of certain meetings without amending the association's bylaws;
- 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;
- authorizes non-profit corporation proxy voting based on a reproduction of the original proxy;
- updates the definition of "governing documents" for homeowners' associations to include the rules and regulations that have been adopted by the association; and
- extends the time limitation for classification as bulk assignee or bulk buyer under the Distressed Condominium Relief Act from July 1, 2016 to July 1, 2018.

The bill does not appear to have a fiscal impact on state or local government.

The bill was approved by the Governor on June 2, 2015, ch. 2015-97, L.O.F., and will become effective on July 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Condominiums

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., which is comprised of units which are individually owned, but have an undivided share of access to common facilities.¹ A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.² A declaration is similar to a constitution in that it governs the relationships among condominium unit owners and the condominium association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.³

All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners, which operates or maintains real property in which unit owners have use rights.⁴ The condominium association is overseen by an elected board of directors, commonly referred to as a “board of administration.”⁵ The association enacts condominium association bylaws, which govern the administration of the association, including, but not limited to, quorum, voting rights, and election and removal of board members.⁶

Cooperative Associations

A cooperative is a form of real property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association,⁷ and individual units are leased to the residents, who own shares in the cooperative association.⁸ The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives are, in practice, operated in a fashion very similar to condominiums, and the laws regulating cooperatives are in many instances nearly identical.

Homeowners' Associations

A homeowners' association is a corporation responsible for the operation of a subdivision. Only homeowners' associations whose covenants and restrictions include mandatory assessments are regulated by the statute.⁹

Distressed Condominium Relief Act

In 2010, the Legislature passed the Distressed Condominium Relief Act (Act) in order to relieve developers, lenders, unit owners, and condominium associations from certain provisions of the Florida Condominium Act. The Act was intended to relieve specific parties from certain liabilities to enable economic opportunities for successor purchasers of distressed condominiums.¹⁰

¹ s. 718.103(11), F.S.

² s. 718.104(2), F.S.

³ *Id.* at (5).

⁴ s. 718.103(2), F.S.

⁵ *Id.* at (4).

⁶ s. 718.112, F.S.

⁷ s. 719.103(2), F.S.

⁸ *Id.* at (26).

⁹ s. 720.301(9), F.S.

¹⁰ ch. 2010-174, L.O.F.

Specifically, the Act created categories of "bulk buyers" and "bulk assignees." A bulk assignee is a person who acquires more than seven condominium parcels as provided in s. 718.703, F.S., and receives an assignment of some or all of the rights of the developer under specified recording documents.¹¹ Similarly, a bulk buyer is a person who acquires more than seven condominium parcels, but who does not receive an assignment of developer rights other than the right to: conduct sales, leasing, and marketing activities within the condominium; be exempt from payment of working capital contributions; and be exempt from rights of first refusal.¹²

Because the Act was created in reaction to the "massive downturn in the condominium market which has occurred throughout the state," it was not intended to be open-ended. Rather, the intent of the Legislature was to enact the relief only for "a specific and defined period."¹³ Accordingly, the time limitation for classification as a bulk assignee or bulk buyer expires July 1, 2016.¹⁴

Effect of the Bill

Condominiums - Association Insurance and Repair of Uninsured Events

Current law at s. 718.111(11), F.S., provides that 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 owners are responsible for the repair or replacement, as determined by the declaration or bylaws. The bill specifies 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.

Condominiums and Cooperatives - Assessments

Sections 718.116(3) and 719.108(3), F.S., provide that any payment received by a condominium or cooperative association from a unit owner must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment. This payment structure applies in spite of any restrictive endorsement, designation, or instruction placed on or accompanying a payment.

The bill amends ss. 718.116(3) and 719.108(3), F.S., to provide that the required distribution of delinquent assessment payments also applies in spite of any purported accord and satisfaction.¹⁵ The bill provides that the amended provisions are intended to clarify existing law.

Condominiums, Cooperatives, and Homeowners' Associations - Fines and Penalties

Current law authorizes condominium, cooperative, and homeowners' associations to levy fines against owners or members who violate the association's rules or other governing documents.¹⁶ A fine may only be levied after the association has provided the owner or member notice and a hearing. If an owner or member fails to pay an imposed 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. Additionally, failure by an owner or member of a condominium or cooperative association to pay a monetary obligation bars him or her from being nominated for the board,¹⁷ and, if he or she is a

¹¹ s. 718.703(1), F.S.

¹² *Id.* at (2).

¹³ s. 718.702, F.S.

¹⁴ s. 718.707, F.S.

¹⁵ Generally, an accord and satisfaction occurs when a person against whom a claim is asserted proves that debt payment instrument or an accompanying written communication contained a conspicuous statement that the instrument was tendered as full satisfaction of the claim. The result is that the claimed debt is discharged. See s. 673.3111, F.S.

¹⁶ ss. 718.303, 719.303, and 720.305, F.S.

¹⁷ ss. 718.112(2)(d)(2) and 719.106(1)(a)2., F.S.

condominium board member, failure to pay after 90 days results in abandonment of his or her seat on the board.¹⁸

The bill amends ss. 718.303, 719.303, and 720.305, F.S., to provide general uniformity among the three provisions. The bill specifies that it is the board of administration of the association that levies any fines and that the committee formed to hear potential fines is limited to that purpose and must be impartial.

With regard to condominium and homeowners' associations, the bill provides that 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. Additionally, any suspensions imposed apply even if the suspension arose from less than all of the units or parcels owned by the member.

With regard to homeowners' associations only, the bill provides that a fine may not exceed \$100 per violation, unless a greater amount is provided in the association's governing documents. The bill also provides that an association member's failure to pay a monetary obligation bars him or her from being nominated for the board, and, if he or she is a board member, failure to pay after 90 days results in abandonment in his or her seat on the board.

Condominiums, Cooperatives, and Homeowners' Associations - Member Voting

Condominium, cooperative, and homeowners' associations all hold various types of membership meetings throughout the year, where votes of the membership may be required. In addition to general membership meetings, the laws governing condominium, cooperative, and homeowners' associations all require an annual meeting of the members at which some or all of the directors of the association may be elected. Prior to holding a member or board meeting, notice of the meeting must be provided to the members. If authorized in the association's bylaws, notice of certain meetings may be provided electronically to members who consent to receive notice electronically.¹⁹

A condominium association is required to have an annual meeting at which directors are elected.²⁰ Votes must be cast by "written ballot or voting machine."²¹ Proxies may not be used in the election.²² Florida Administrative Code governing condominium associations also provides detailed regulations for voting and election procedures, such as requiring that paper ballots be mailed in double envelopes.²³ Similar statutory and administrative requirements apply to cooperative associations.²⁴

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

¹⁸ s. 718.112(2)(n), F.S.

¹⁹ ss. 718.112(2)(d), 719.106(1)(d), 720.303(2)(c), F.S.

²⁰ s. 718.112(2)(d)1., F.S.; see generally Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, p. 40-57 (14th. ed. 2014-2015).

²¹ s. 718.112(2)(d)4., F.S.

²² *Id.*

²³ Rule 61B-23.0021, F.A.C.

²⁴ s. 719.106(1)(d), F.S.; Rule 61B-75.005, F.A.C.

²⁵ s. 720.306(2), F.S.

²⁶ s. 720.306(9)(a), F.S.

²⁷ s. 720.306(8), F.S.

The bill provides that a condominium, cooperative, or homeowners' association may elect to conduct elections and other membership votes through an internet-based online voting system according to the following terms:

Each member voting electronically must consent, in writing, to electronic voting.

The association must provide each member with a method to:

- Authenticate the member's identity to the online voting system.
- Transmit an electronic ballot for board elections to the electronic voting system that ensures the secrecy and integrity of each ballot.
- Verify the authenticity of receipts sent from the electronic voting system.
- Confirm, at least 14 days before the voting deadline, that the member's electronic device can successfully communicate with the online voting system.

A homeowners' association must also provide each member with an online voting method that is consistent with the election and voting procedures in the association's bylaws.

In addition, the condominium, cooperative, or homeowners' association's online voting system must be able to:

- Authenticate the member's identity.
- Authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.
- Transmit a receipt from the online voting system to each member who casts an electronic vote.
- Permanently separate any authentication or identifying information from an electronic ballot for board elections, rendering it impossible to tie a ballot to a specific member.²⁸
- Store and keep electronic ballots accessible to election officials for recount, inspection, and review purposes.

The bill also provides that a member voting electronically is counted as being in attendance at the meeting for purposes of determining a quorum, and for condominium and cooperative associations, a quorum established based on members voting electronically is only limited to the issue specifically identified in the electronic vote.

The board of directors of an association must adopt a resolution in order to authorize online voting. The board resolution must provide that members receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for members to consent, in writing, to online voting, and must establish reasonable procedures and deadlines for members to opt-out of online voting after giving consent. Written notice of a meeting at which a board resolution regarding online voting will be considered must be provided at least 14 days before the meeting. Evidence of compliance with this 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 member's consent to online voting is valid until the member opts-out of online voting according to the procedures established by the board of administration.

The electronic voting provisions apply to any matter that requires a vote of the unit owners or members who are not members of a timeshare condominium or cooperative association.

The bill also deletes the requirement in ss. 718.112(2)(d), 719.106(1)(d), 720.303(2)(c), F.S., that an association may only provide electronic notice of meetings to members who consent to such notice if the association's bylaws provide for electronic notice.

Homeowners' Associations - Amendments to Governing Documents

²⁸ For homeowners' associations, this provision only applies if the association's bylaws provide for secret ballots for the election of directors.

Section 720.306(1), 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 of 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.

The bill amends 720.306(1), 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.

Other Effects of the Bill

The bill amends s. 617.0721, F.S., related to proxy voting for members of a non-profit corporation, to provide that a copy, fax, or other reliable reproduction of an original proxy may be substituted for any purpose for which the original proxy could be used.

The bill amends s. 718.111, F.S., and s. 719.104, F.S., to specify that "all other *written* records" of the condominium association and cooperative association which are related to the association but not otherwise specifically required in current law, are considered official records that must be maintained by the association.

The bill amends s. 720.301, F.S., to update the definition of "governing documents" for homeowners' associations, to include the rules and regulations adopted under the authority of the association's declaration, articles of incorporation, or bylaws.

The bill creates s. 720.3015, F.S., to identify ch. 720, F.S., as the "Homeowners' Association Act."

The bill extends the time limitation for classification as a bulk assignee or bulk buyer under the Distressed Condominium Relief Act from July 1, 2016 until July 1, 2018.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill appears to require rulemaking by the Department of Business and Professional Regulation, which may require a minimal nonrecurring expenditure in FY 2015-16 payable from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.