

1 A bill to be entitled

2 An act relating to residential properties; amending s.
3 201.02, F.S.; providing that a certain deed, transfer,
4 or conveyance from an owner of property is subject to
5 certain taxes; amending s. 617.0721, F.S.; authorizing
6 the use of a copy, facsimile transmission, or other
7 reliable reproduction of an original proxy vote for
8 certain purposes; amending s. 718.103, F.S.; revising
9 and providing definitions; amending s. 718.111, F.S.;
10 revising liability of unit owners under certain
11 conditions; revising what constitutes official records
12 of an association; amending s. 718.112, F.S.; revising
13 requirements for board of administration and unit
14 owner meetings; clarifying the voting process for
15 providing reserves; amending s. 718.113, F.S.;
16 revising powers of the board relating to the
17 installation of solar collectors, clotheslines, or
18 other energy-efficient devices; amending s. 718.116,
19 F.S.; revising provisions relating to the liability of
20 condominium unit owners and mortgagees; revising
21 applicability; revising effect of a claim of lien;
22 amending s. 718.301, F.S.; adding conditions under
23 which certain unit owners are entitled to elect at
24 least a majority of the members of the board of
25 administration of an association; requiring a bulk-
26 unit purchaser to deliver certain items during the

27 transfer of association control from the bulk-unit
28 purchaser; amending s. 718.302, F.S.; revising the
29 conditions under which certain grants, reservations,
30 or contracts made by an association may be cancelled;
31 prohibiting a lender-unit purchaser from voting on
32 cancellation of certain grants, reservations, or
33 contracts while the association is under control of
34 that lender-unit purchaser; amending s. 718.303, F.S.;
35 providing that a fine may be levied by the board or
36 its authorized designee under certain conditions;
37 revising requirements for levying a fine or
38 suspension; amending s. 718.501, F.S.; conforming
39 provisions of chapter 718, F.S., relating to the
40 enforcement powers of the Division of Florida
41 Condominiums, Timeshares, and Mobile Homes; creating
42 s. 718.709, F.S.; providing applicability of
43 provisions relating to the Distressed Condominium
44 Relief Act; creating part VIII of chapter 718, F.S.;
45 providing legislative intent; providing definitions;
46 authorizing a bulk-unit purchaser to exercise certain
47 developer rights; requiring a bulk-unit purchaser to
48 pay a working capital contribution under certain
49 circumstances; providing applicability; authorizing a
50 lender-unit purchaser to exercise any developer rights
51 he or she acquires; requiring a bulk-unit purchaser
52 and a lender-unit purchaser to comply with specified

53 provisions under chapter 718, F.S.; limiting the
54 rights of bulk-unit purchasers and lender-unit
55 purchasers to vote on reserves or funding of reserves;
56 prohibiting the transfer of such voting rights;
57 providing assessment liability for bulk-unit
58 purchasers and lender-unit purchasers; providing for
59 suspension of a director who has been elected or
60 appointed by a bulk-unit purchaser in certain
61 circumstances; specifying amendments and alterations
62 for which majority approval of unit owners is
63 required; requiring consent of a bulk-unit purchaser,
64 lender-unit purchaser, or developer to certain
65 amendments; requiring certain warranties and
66 disclosures; subjecting multiple bulk-unit purchasers
67 to joint and several liability; prohibiting a board of
68 administration, a majority of which is elected by a
69 bulk-unit purchaser, from resolving certain
70 construction disputes unless other conditions are
71 satisfied; providing that a bulk-unit purchaser or
72 lender-unit purchaser who does not comply with chapter
73 718, F.S., forfeits all protections or exemptions
74 under chapter 718, F.S.; clarifying conditions under
75 which a bulk-unit purchaser must deliver certain items
76 during the transfer of association control from the
77 bulk-unit purchaser; amending s. 719.104, F.S.;

78 revising what constitutes the official records of an

79 association; amending s. 719.106, F.S.; revising
 80 requirements for board of administration and
 81 shareholder meetings; amending s. 719.108, F.S.;
 82 revising applicability; revising effect of a claim of
 83 lien; amending s. 719.303, F.S.; providing that a fine
 84 may be levied by the board or its authorized designee
 85 under certain conditions; revising requirements for
 86 levying a fine or suspension; amending s. 720.301,
 87 F.S.; revising the definition of the term "governing
 88 documents"; creating s. 720.3015, F.S.; providing a
 89 short title; amending s. 720.305, F.S.; revising
 90 requirements for levying a fine or suspension;
 91 revising application of certain provisions; amending
 92 s. 720.306, F.S.; revising requirements for the
 93 adoption of amendments to the governing documents;
 94 revising requirements for the election of directors;
 95 revising requirements for board of director and member
 96 meetings; providing an effective date.

97
 98 Be It Enacted by the Legislature of the State of Florida:
 99

100 Section 1. Subsection (9) of section 201.02, Florida
 101 Statutes, is amended to read:

102 201.02 Tax on deeds and other instruments relating to real
 103 property or interests in real property.—

104 (9) (a) A certificate of title issued by the clerk of court

105 | under s. 45.031(5) in a judicial sale of real property under an
 106 | order or final judgment issued pursuant to a foreclosure
 107 | proceeding is subject to the tax imposed by subsection (1).
 108 | However, the amount of the tax shall be computed based solely on
 109 | the amount of the highest and best bid received for the property
 110 | at the foreclosure sale. This paragraph ~~subsection~~ is intended
 111 | to clarify existing law and shall be applied retroactively.

112 | (b) A deed, transfer, or conveyance from an owner of
 113 | property, subject to assessments authorized by chapter 718,
 114 | chapter 719, chapter 720, or chapter 721, to an association
 115 | having lien rights against the property in lieu of the
 116 | foreclosure of an assessment lien held by the association
 117 | against such property is subject to the tax imposed by
 118 | subsection (1). However, the amount of the tax shall be computed
 119 | based solely on the amount of the unpaid assessments which are
 120 | due and owing to the association on the date of said transfer.

121 | Section 2. Subsection (2) of section 617.0721, Florida
 122 | Statutes, is amended to read:

123 | 617.0721 Voting by members.—

124 | (2) A member who is entitled to vote may vote in person
 125 | or, unless the articles of incorporation or the bylaws otherwise
 126 | provide, may vote by proxy executed in writing by the member or
 127 | by his or her duly authorized attorney in fact. Notwithstanding
 128 | any provision to the contrary in the articles of incorporation
 129 | or bylaws, any copy, facsimile transmission, or other reliable
 130 | reproduction of the original proxy may be substituted or used in

131 lieu of the original proxy for any purpose for which the
132 original proxy could be used if the copy, facsimile
133 transmission, or other reproduction is a complete reproduction
134 of the entire proxy. An appointment of a proxy is not valid
135 after 11 months following the date of its execution unless
136 otherwise provided in the proxy.

137 (a) If directors or officers are to be elected by members,
138 the bylaws may provide that such elections may be conducted by
139 mail.

140 (b) A corporation may reject a vote, consent, waiver, or
141 proxy appointment if the secretary or other officer or agent
142 authorized to tabulate votes, acting in good faith, has a
143 reasonable basis for doubting the validity of the signature on
144 it or the signatory's authority to sign for the member.

145 Section 3. Subsections (12) through (30) of section
146 718.103, Florida Statutes, are renumbered as subsections (13)
147 through (31), respectively, a new subsection (12) is added to
148 that section, and present subsection (16) of that section is
149 amended, to read:

150 718.103 Definitions.—As used in this chapter, the term:

151 (12) "Condominium documents" means:

152 (a) The recorded declaration of condominium for a
153 community and all duly adopted and recorded amendments,
154 supplements, and exhibits of the declaration;

155 (b) The recorded articles of incorporation and bylaws of
156 the condominium association and any duly adopted and recorded

157 amendments of the declaration; and

158 (c) Rules and regulations adopted under the authority of
 159 the recorded declaration of condominium, articles of
 160 incorporation or bylaws, and duly adopted amendments of the
 161 declaration.

162 (17)-(16) "Developer" means a person who creates a
 163 condominium or offers condominium parcels for sale or lease in
 164 the ordinary course of business, but does not include:

165 (a) An owner or lessee of a condominium or cooperative
 166 unit who has acquired the unit for his or her own occupancy;

167 (b) A cooperative association that creates a condominium
 168 by conversion of an existing residential cooperative after
 169 control of the association has been transferred to the unit
 170 owners if, following the conversion, the unit owners are the
 171 same persons who were unit owners of the cooperative and no
 172 units are offered for sale or lease to the public as part of the
 173 plan of conversion;

174 (c) A bulk-unit purchaser, lender-unit purchaser, bulk
 175 assignee, or bulk buyer as defined in s. 718.802 ~~718.703~~;

176 (d) A person who acquires title to 7 or fewer units
 177 operated by the same association consisting of 40 or fewer units
 178 or who acquires title to less than 20 percent of the units
 179 operated by the same association consisting of more than 40
 180 units, regardless of whether that person offers any of those
 181 units for sale; or

182 (e)-(d) A state, county, or municipal entity acting as a

183 | lessor and not otherwise named as a developer in the declaration
 184 | of condominium.

185 | Section 4. Paragraph (j) of subsection (11) and paragraph
 186 | (a) of subsection (12) of section 718.111, Florida Statutes, are
 187 | amended to read:

188 | 718.111 The association.—

189 | (11) INSURANCE.—In order to protect the safety, health,
 190 | and welfare of the people of the State of Florida and to ensure
 191 | consistency in the provision of insurance coverage to
 192 | condominiums and their unit owners, this subsection applies to
 193 | every residential condominium in the state, regardless of the
 194 | date of its declaration of condominium. It is the intent of the
 195 | Legislature to encourage lower or stable insurance premiums for
 196 | associations described in this subsection.

197 | (j) Any portion of the condominium property that must be
 198 | insured by the association against property loss pursuant to
 199 | paragraph (f) which is damaged by an insurable event shall be
 200 | reconstructed, repaired, or replaced as necessary by the
 201 | association as a common expense. In the absence of an insurable
 202 | event, the association or the unit owners shall be responsible
 203 | for the reconstruction, repair, or replacement, as determined by
 204 | the maintenance provisions of the declaration or bylaws. All
 205 | property insurance deductibles, ~~uninsured losses,~~ and other
 206 | damages in excess of property insurance coverage under the
 207 | property insurance policies maintained by the association are a
 208 | common expense of the condominium, except that:

209 1. A unit owner is responsible for the costs of repair or
210 replacement of any portion of the condominium property not paid
211 by insurance proceeds if such damage is caused by intentional
212 conduct, negligence, or failure to comply with the terms of the
213 declaration or the rules of the association by a unit owner, the
214 members of his or her family, unit occupants, tenants, guests,
215 or invitees, without compromise of the subrogation rights of the
216 insurer.

217 2. The provisions of subparagraph 1. regarding the
218 financial responsibility of a unit owner for the costs of
219 repairing or replacing other portions of the condominium
220 property also apply to the costs of repair or replacement of
221 personal property of other unit owners or the association, as
222 well as other property, whether real or personal, which the unit
223 owners are required to insure.

224 3. To the extent the cost of repair or reconstruction for
225 which the unit owner is responsible under this paragraph is
226 reimbursed to the association by insurance proceeds, and the
227 association has collected the cost of such repair or
228 reconstruction from the unit owner, the association shall
229 reimburse the unit owner without the waiver of any rights of
230 subrogation.

231 4. The association is not obligated to pay for
232 reconstruction or repairs of property losses as a common expense
233 if the property losses were known or should have been known to a
234 unit owner and were not reported to the association until after

235 the insurance claim of the association for that property was
236 settled or resolved with finality, or denied because it was
237 untimely filed.

238 (12) OFFICIAL RECORDS.—

239 (a) From the inception of the association, the association
240 shall maintain each of the following items, if applicable, which
241 constitutes the official records of the association:

242 1. A copy of the plans, permits, warranties, and other
243 items provided by the developer pursuant to s. 718.301(4).

244 2. A photocopy of the recorded declaration of condominium
245 of each condominium operated by the association and each
246 amendment to each declaration.

247 3. A photocopy of the recorded bylaws of the association
248 and each amendment to the bylaws.

249 4. A certified copy of the articles of incorporation of
250 the association, or other documents creating the association,
251 and each amendment thereto.

252 5. A copy of the current rules of the association.

253 6. A book or books that contain the minutes of all
254 meetings of the association, the board of administration, and
255 the unit owners, which minutes must be retained for at least 7
256 years.

257 7. A current roster of all unit owners and their mailing
258 addresses, unit identifications, voting certifications, and, if
259 known, telephone numbers. The association shall also maintain
260 the electronic mailing addresses and facsimile numbers of unit

HB 791

2015

261 owners consenting to receive notice by electronic transmission.
262 The electronic mailing addresses and facsimile numbers are not
263 accessible to unit owners if consent to receive notice by
264 electronic transmission is not provided in accordance with
265 subparagraph (c)5. However, the association is not liable for an
266 inadvertent disclosure of the electronic mail address or
267 facsimile number for receiving electronic transmission of
268 notices.

269 8. All current insurance policies of the association and
270 condominiums operated by the association.

271 9. A current copy of any management agreement, lease, or
272 other contract to which the association is a party or under
273 which the association or the unit owners have an obligation or
274 responsibility.

275 10. Bills of sale or transfer for all property owned by
276 the association.

277 11. Accounting records for the association and separate
278 accounting records for each condominium that the association
279 operates. All accounting records must be maintained for at least
280 7 years. Any person who knowingly or intentionally defaces or
281 destroys such records, or who knowingly or intentionally fails
282 to create or maintain such records, with the intent of causing
283 harm to the association or one or more of its members, is
284 personally subject to a civil penalty pursuant to s.
285 718.501(1)(d). The accounting records must include, but are not
286 limited to:

- 287 a. Accurate, itemized, and detailed records of all
 288 receipts and expenditures.
- 289 b. A current account and a monthly, bimonthly, or
 290 quarterly statement of the account for each unit designating the
 291 name of the unit owner, the due date and amount of each
 292 assessment, the amount paid on the account, and the balance due.
- 293 c. All audits, reviews, accounting statements, and
 294 financial reports of the association or condominium.
- 295 d. All contracts for work to be performed. Bids for work
 296 to be performed are also considered official records and must be
 297 maintained by the association.
- 298 12. Ballots, sign-in sheets, voting proxies, and all other
 299 papers relating to voting by unit owners, which must be
 300 maintained for 1 year from the date of the election, vote, or
 301 meeting to which the document relates, notwithstanding paragraph
 302 (b).
- 303 13. All rental records if the association is acting as
 304 agent for the rental of condominium units.
- 305 14. A copy of the current question and answer sheet as
 306 described in s. 718.504.
- 307 15. All other written records of the association not
 308 specifically included in the foregoing which are related to the
 309 operation of the association.
- 310 16. A copy of the inspection report as described in s.
 311 718.301(4)(p).
- 312 Section 5. Paragraphs (c), (d), and (f) of subsection (2)

313 of section 718.112, Florida Statutes, are amended to read:

314 718.112 Bylaws.—

315 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
316 following and, if they do not do so, shall be deemed to include
317 the following:

318 (c) Board of administration meetings.—Meetings of the
319 board of administration at which a quorum of the members is
320 present are open to all unit owners. Members of the board of
321 administration may use e-mail as a means of communication but
322 may not cast a vote on an association matter via e-mail. A unit
323 owner may tape record or videotape the meetings; however, a unit
324 owner may not post the recordings on any website or other media
325 that can readily be viewed by persons who are not members of the
326 association. The right to attend such meetings includes the
327 right to speak at such meetings with reference to all designated
328 agenda items. The division shall adopt reasonable rules
329 governing the tape recording and videotaping of the meeting. The
330 association may adopt written reasonable rules governing the
331 frequency, duration, and manner of unit owner statements.

332 1. Adequate notice of all board meetings, which must
333 specifically identify all agenda items, must be posted
334 conspicuously on the condominium property at least 48 continuous
335 hours before the meeting except in an emergency. If 20 percent
336 of the voting interests petition the board to address an item of
337 business, the board, within 60 days after receipt of the
338 petition, shall place the item on the agenda at its next regular

339 board meeting or at a special meeting called for that purpose.
340 An item not included on the notice may be taken up on an
341 emergency basis by a vote of at least a majority plus one of the
342 board members. Such emergency action must be noticed and
343 ratified at the next regular board meeting. However, written
344 notice of a meeting at which a nonemergency special assessment
345 or an amendment to rules regarding unit use will be considered
346 must be mailed, delivered, or electronically transmitted to the
347 unit owners and posted conspicuously on the condominium property
348 at least 14 days before the meeting. Evidence of compliance with
349 this 14-day notice requirement must be made by an affidavit
350 executed by the person providing the notice and filed with the
351 official records of the association. Upon notice to the unit
352 owners, the board shall, by duly adopted rule, designate a
353 specific location on the condominium or association property
354 where all notices of board meetings must be posted. If there is
355 no condominium property or association property where notices
356 can be posted, notices shall be mailed, delivered, or
357 electronically transmitted to each unit owner at least 14 days
358 before the meeting. In lieu of or in addition to the physical
359 posting of the notice on the condominium property, the
360 association may, by reasonable rule, adopt a procedure for
361 conspicuously posting and repeatedly broadcasting the notice and
362 the agenda on a closed-circuit cable television system serving
363 the condominium association. However, if broadcast notice is
364 used in lieu of a notice physically posted on condominium

365 property, the notice and agenda must be broadcast at least four
366 times every broadcast hour of each day that a posted notice is
367 otherwise required under this section. If broadcast notice is
368 provided, the notice and agenda must be broadcast in a manner
369 and for a sufficient continuous length of time so as to allow an
370 average reader to observe the notice and read and comprehend the
371 entire content of the notice and the agenda. Notice of any
372 meeting in which regular or special assessments against unit
373 owners are to be considered must specifically state that
374 assessments will be considered and provide the nature, estimated
375 cost, and description of the purposes for such assessments.

376 2. Meetings of a committee to take final action on behalf
377 of the board or make recommendations to the board regarding the
378 association budget are subject to this paragraph. Meetings of a
379 committee that does not take final action on behalf of the board
380 or make recommendations to the board regarding the association
381 budget are subject to this section, unless those meetings are
382 exempted from this section by the bylaws of the association.

383 3. Notwithstanding any other law, the requirement that
384 board meetings and committee meetings be open to the unit owners
385 does not apply to:

386 a. Meetings between the board or a committee and the
387 association's attorney, with respect to proposed or pending
388 litigation, if the meeting is held for the purpose of seeking or
389 rendering legal advice; or

390 b. Board meetings held for the purpose of discussing

391 personnel matters.

392 (d) Unit owner meetings.—

393 1. An annual meeting of the unit owners shall be held at
394 the location provided in the association bylaws and, if the
395 bylaws are silent as to the location, the meeting shall be held
396 within 45 miles of the condominium property. However, such
397 distance requirement does not apply to an association governing
398 a timeshare condominium.

399 2. Unless the bylaws provide otherwise, a vacancy on the
400 board caused by the expiration of a director's term shall be
401 filled by electing a new board member, and the election must be
402 by secret ballot. An election is not required if the number of
403 vacancies equals or exceeds the number of candidates. For
404 purposes of this paragraph, the term "candidate" means an
405 eligible person who has timely submitted the written notice, as
406 described in sub-subparagraph 4.a., of his or her intention to
407 become a candidate. Except in a timeshare or nonresidential
408 condominium, or if the staggered term of a board member does not
409 expire until a later annual meeting, or if all members' terms
410 would otherwise expire but there are no candidates, the terms of
411 all board members expire at the annual meeting, and such members
412 may stand for reelection unless prohibited by the bylaws. If the
413 bylaws or articles of incorporation permit terms of no more than
414 2 years, the association board members may serve 2-year terms.
415 If the number of board members whose terms expire at the annual
416 meeting equals or exceeds the number of candidates, the

417 candidates become members of the board effective upon the
418 adjournment of the annual meeting. Unless the bylaws provide
419 otherwise, any remaining vacancies shall be filled by the
420 affirmative vote of the majority of the directors making up the
421 newly constituted board even if the directors constitute less
422 than a quorum or there is only one director. In a residential
423 condominium association of more than 10 units or in a
424 residential condominium association that does not include
425 timeshare units or timeshare interests, coowners of a unit may
426 not serve as members of the board of directors at the same time
427 unless they own more than one unit or unless there are not
428 enough eligible candidates to fill the vacancies on the board at
429 the time of the vacancy. A unit owner in a residential
430 condominium desiring to be a candidate for board membership must
431 comply with sub-subparagraph 4.a. and must be eligible to be a
432 candidate to serve on the board of directors at the time of the
433 deadline for submitting a notice of intent to run in order to
434 have his or her name listed as a proper candidate on the ballot
435 or to serve on the board. A person who has been suspended or
436 removed by the division under this chapter, or who is delinquent
437 in the payment of any monetary obligation due to the
438 association, is not eligible to be a candidate for board
439 membership and may not be listed on the ballot. A person who has
440 been convicted of any felony in this state or in a United States
441 District or Territorial Court, or who has been convicted of any
442 offense in another jurisdiction which would be considered a

443 felony if committed in this state, is not eligible for board
444 membership unless such felon's civil rights have been restored
445 for at least 5 years as of the date such person seeks election
446 to the board. The validity of an action by the board is not
447 affected if it is later determined that a board member is
448 ineligible for board membership due to having been convicted of
449 a felony. This subparagraph does not limit the term of a member
450 of the board of a nonresidential condominium.

451 3. The bylaws must provide the method of calling meetings
452 of unit owners, including annual meetings. Written notice must
453 include an agenda, must be mailed, hand delivered, or
454 electronically transmitted to each unit owner at least 14 days
455 before the annual meeting, and must be posted in a conspicuous
456 place on the condominium property at least 14 continuous days
457 before the annual meeting. Upon notice to the unit owners, the
458 board shall, by duly adopted rule, designate a specific location
459 on the condominium property or association property where all
460 notices of unit owner meetings shall be posted. This requirement
461 does not apply if there is no condominium property or
462 association property for posting notices. In lieu of, or in
463 addition to, the physical posting of meeting notices, the
464 association may, by reasonable rule, adopt a procedure for
465 conspicuously posting and repeatedly broadcasting the notice and
466 the agenda on a closed-circuit cable television system serving
467 the condominium association. However, if broadcast notice is
468 used in lieu of a notice posted physically on the condominium

469 property, the notice and agenda must be broadcast at least four
470 times every broadcast hour of each day that a posted notice is
471 otherwise required under this section. If broadcast notice is
472 provided, the notice and agenda must be broadcast in a manner
473 and for a sufficient continuous length of time so as to allow an
474 average reader to observe the notice and read and comprehend the
475 entire content of the notice and the agenda. Unless a unit owner
476 waives in writing the right to receive notice of the annual
477 meeting, such notice must be hand delivered, mailed, or
478 electronically transmitted to each unit owner. Notice for
479 meetings and notice for all other purposes must be mailed to
480 each unit owner at the address last furnished to the association
481 by the unit owner, or hand delivered to each unit owner.
482 However, if a unit is owned by more than one person, the
483 association must provide notice to the address that the
484 developer identifies for that purpose and thereafter as one or
485 more of the owners of the unit advise the association in
486 writing, or if no address is given or the owners of the unit do
487 not agree, to the address provided on the deed of record. An
488 officer of the association, or the manager or other person
489 providing notice of the association meeting, must provide an
490 affidavit or United States Postal Service certificate of
491 mailing, to be included in the official records of the
492 association affirming that the notice was mailed or hand
493 delivered in accordance with this provision.

494 4. The members of the board of a residential condominium

495 shall be elected by written ballot or voting machine. Proxies
496 may not be used in electing the board in general elections or
497 elections to fill vacancies caused by recall, resignation, or
498 otherwise, unless otherwise provided in this chapter. This
499 subparagraph does not apply to an association governing a
500 timeshare condominium.

501 a. At least 60 days before a scheduled election, the
502 association shall mail, deliver, or electronically transmit, by
503 separate association mailing or included in another association
504 mailing, delivery, or transmission, including regularly
505 published newsletters, to each unit owner entitled to a vote, a
506 first notice of the date of the election. A unit owner or other
507 eligible person desiring to be a candidate for the board must
508 give written notice of his or her intent to be a candidate to
509 the association at least 40 days before a scheduled election.
510 Together with the written notice and agenda as set forth in
511 subparagraph 3., the association shall mail, deliver, or
512 electronically transmit a second notice of the election to all
513 unit owners entitled to vote, together with a ballot that lists
514 all candidates. Upon request of a candidate, an information
515 sheet, no larger than 8 1/2 inches by 11 inches, which must be
516 furnished by the candidate at least 35 days before the election,
517 must be included with the mailing, delivery, or transmission of
518 the ballot, with the costs of mailing, delivery, or electronic
519 transmission and copying to be borne by the association. The
520 association is not liable for the contents of the information

521 sheets prepared by the candidates. In order to reduce costs, the
522 association may print or duplicate the information sheets on
523 both sides of the paper. The division shall by rule establish
524 voting procedures consistent with this sub-subparagraph,
525 including rules establishing procedures for giving notice by
526 electronic transmission and rules providing for the secrecy of
527 ballots. Elections shall be decided by a plurality of ballots
528 cast. There is no quorum requirement; however, at least 20
529 percent of the eligible voters must cast a ballot in order to
530 have a valid election. A unit owner may not permit any other
531 person to vote his or her ballot, and any ballots improperly
532 cast are invalid. A unit owner who violates this provision may
533 be fined by the association in accordance with s. 718.303. A
534 unit owner who needs assistance in casting the ballot for the
535 reasons stated in s. 101.051 may obtain such assistance. The
536 regular election must occur on the date of the annual meeting.
537 Notwithstanding this sub-subparagraph, an election is not
538 required unless more candidates file notices of intent to run or
539 are nominated than board vacancies exist.

540 b. Within 90 days after being elected or appointed to the
541 board of an association of a residential condominium, each newly
542 elected or appointed director shall certify in writing to the
543 secretary of the association that he or she has read the
544 association's declaration of condominium, articles of
545 incorporation, bylaws, and current written policies; that he or
546 she will work to uphold such documents and policies to the best

547 of his or her ability; and that he or she will faithfully
548 discharge his or her fiduciary responsibility to the
549 association's members. In lieu of this written certification,
550 within 90 days after being elected or appointed to the board,
551 the newly elected or appointed director may submit a certificate
552 of having satisfactorily completed the educational curriculum
553 administered by a division-approved condominium education
554 provider within 1 year before or 90 days after the date of
555 election or appointment. The written certification or
556 educational certificate is valid and does not have to be
557 resubmitted as long as the director serves on the board without
558 interruption. A director of an association of a residential
559 condominium who fails to timely file the written certification
560 or educational certificate is suspended from service on the
561 board until he or she complies with this sub-subparagraph. The
562 board may temporarily fill the vacancy during the period of
563 suspension. The secretary shall cause the association to retain
564 a director's written certification or educational certificate
565 for inspection by the members for 5 years after a director's
566 election or the duration of the director's uninterrupted tenure,
567 whichever is longer. Failure to have such written certification
568 or educational certificate on file does not affect the validity
569 of any board action.

570 c. Any challenge to the election process must be commenced
571 within 60 days after the election results are announced.

572 5. Any approval by unit owners called for by this chapter

573 or the applicable declaration or bylaws, including, but not
574 limited to, the approval requirement in s. 718.111(8), must be
575 made at a duly noticed meeting of unit owners and is subject to
576 all requirements of this chapter or the applicable condominium
577 documents relating to unit owner decisionmaking, except that
578 unit owners may take action by written agreement, without
579 meetings, on matters for which action by written agreement
580 without meetings is expressly allowed by the applicable bylaws
581 or declaration or any law that provides for such action.

582 6. Unit owners may waive notice of specific meetings if
583 allowed by the applicable bylaws or declaration or any law. If
584 authorized by the bylaws, notice of meetings of the board of
585 administration, unit owner meetings, except unit owner meetings
586 called to recall board members under paragraph (j), and
587 committee meetings may be given by electronic transmission to
588 unit owners who consent to receive notice by electronic
589 transmission.

590 7. Unit owners have the right to participate in meetings
591 of unit owners with reference to all designated agenda items.
592 However, the association may adopt reasonable rules governing
593 the frequency, duration, and manner of unit owner participation.

594 8. A unit owner may tape record or videotape a meeting of
595 the unit owners subject to reasonable rules adopted by the
596 division; however, a unit owner may not post the recording on
597 any website or other media that can readily be viewed by persons
598 who are not members of the association.

599 9. Unless otherwise provided in the bylaws, any vacancy
600 occurring on the board before the expiration of a term may be
601 filled by the affirmative vote of the majority of the remaining
602 directors, even if the remaining directors constitute less than
603 a quorum, or by the sole remaining director. In the alternative,
604 a board may hold an election to fill the vacancy, in which case
605 the election procedures must conform to sub-subparagraph 4.a.
606 unless the association governs 10 units or fewer and has opted
607 out of the statutory election process, in which case the bylaws
608 of the association control. Unless otherwise provided in the
609 bylaws, a board member appointed or elected under this section
610 shall fill the vacancy for the unexpired term of the seat being
611 filled. Filling vacancies created by recall is governed by
612 paragraph (j) and rules adopted by the division.

613 10. This chapter does not limit the use of general or
614 limited proxies, require the use of general or limited proxies,
615 or require the use of a written ballot or voting machine for any
616 agenda item or election at any meeting of a timeshare
617 condominium association or nonresidential condominium
618 association.

619
620 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
621 association of 10 or fewer units may, by affirmative vote of a
622 majority of the total voting interests, provide for different
623 voting and election procedures in its bylaws, which may be by a
624 proxy specifically delineating the different voting and election

625 | procedures. The different voting and election procedures may
 626 | provide for elections to be conducted by limited or general
 627 | proxy.

628 | (f) Annual budget.—

629 | 1. The proposed annual budget of estimated revenues and
 630 | expenses must be detailed and must show the amounts budgeted by
 631 | accounts and expense classifications, including, at a minimum,
 632 | any if applicable, ~~but not limited to,~~ those expenses listed in
 633 | s. 718.504(21). A multicondominium association shall adopt a
 634 | separate budget of common expenses for each condominium the
 635 | association operates and shall adopt a separate budget of common
 636 | expenses for the association. In addition, if the association
 637 | maintains limited common elements with the cost to be shared
 638 | only by those entitled to use the limited common elements as
 639 | provided for in s. 718.113(1), the budget or a schedule attached
 640 | to it must show the amount budgeted for this maintenance. If,
 641 | after turnover of control of the association to the unit owners,
 642 | any of the expenses listed in s. 718.504(21) are not applicable,
 643 | they need not be listed.

644 | 2.a. In addition to annual operating expenses, the budget
 645 | must include reserve accounts for capital expenditures and
 646 | deferred maintenance. These accounts must include, but are not
 647 | limited to, roof replacement, building painting, and pavement
 648 | resurfacing, regardless of the amount of deferred maintenance
 649 | expense or replacement cost, and ~~for~~ any other item that has a
 650 | deferred maintenance expense or replacement cost that exceeds

651 \$10,000. The amount to be reserved must be computed using a
652 formula based upon estimated remaining useful life and estimated
653 replacement cost or deferred maintenance expense of each reserve
654 item. The association may adjust replacement reserve assessments
655 annually to take into account any changes in estimates or
656 extension of the useful life of a reserve item caused by
657 deferred maintenance. This subsection does not apply to an
658 adopted budget in which the members of an association have
659 determined, by a majority vote at a duly called meeting of the
660 association, to provide no reserves or less reserves than
661 required by this subsection.

662 b. Before ~~However, prior to~~ turnover of control of an
663 association by a developer to unit owners other than a developer
664 pursuant to s. 718.301, the developer may vote the voting
665 interests allocated to its units to waive the reserves or reduce
666 the funding of reserves through the period expiring at the end
667 of the second fiscal year after the fiscal year in which the
668 certificate of a surveyor and mapper is recorded pursuant to s.
669 718.104(4)(e) or an instrument that transfers title to a unit in
670 the condominium which is not accompanied by a recorded
671 assignment of developer rights in favor of the grantee of such
672 unit is recorded, whichever occurs first, after which time
673 reserves may be waived or reduced only upon the vote of a
674 majority of all nondeveloper voting interests voting in person
675 or by limited proxy at a duly called meeting of the association.
676 If a meeting of the unit owners has been called to determine

677 whether to waive or reduce the funding of reserves, and no such
678 result is achieved or a quorum is not attained, the reserves
679 included in the budget shall go into effect. After the turnover,
680 the developer may vote its voting interest to waive or reduce
681 the funding of reserves.

682 3. Reserve funds and any interest accruing thereon shall
683 remain in the reserve account or accounts, and may be used only
684 for authorized reserve expenditures unless their use for other
685 purposes is approved in advance by a majority vote at a duly
686 called meeting of the association. Before ~~Prior to~~ turnover of
687 control of an association by a developer to unit owners other
688 than the developer pursuant to s. 718.301, the developer-
689 controlled association may ~~shall~~ not vote to use reserves for
690 purposes other than those ~~that~~ for which they were intended
691 without the approval of a majority of all nondeveloper voting
692 interests, voting in person or by limited proxy at a duly called
693 meeting of the association.

694 4. The only voting interests that are eligible to vote on
695 questions that involve waiving or reducing the funding of
696 reserves, or using existing reserve funds for purposes other
697 than purposes for which the reserves were intended, are the
698 voting interests of the units subject to assessment to fund the
699 reserves in question. Proxy questions relating to waiving or
700 reducing the funding of reserves or using existing reserve funds
701 for purposes other than purposes for which the reserves were
702 intended must ~~shall~~ contain the following statement in

703 capitalized, bold letters in a font size larger than any other
 704 used on the face of the proxy ballot: WAIVING OF RESERVES, IN
 705 WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING
 706 RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF
 707 UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

708 Section 6. Subsection (7) of section 718.113, Florida
 709 Statutes, is amended to read:

710 718.113 Maintenance; limitation upon improvement; display
 711 of flag; hurricane shutters and protection; display of religious
 712 decorations.-

713 (7) Notwithstanding the provisions of this section or the
 714 condominium governing documents of a condominium or a
 715 multicondominium association, the board of administration may,
 716 without any requirement for approval of the unit owners, install
 717 upon or within the common elements or association property solar
 718 collectors, clotheslines, or other energy-efficient devices
 719 based on renewable resources for the benefit of the unit owners.

720 Section 7. Paragraphs (a) and (b) of subsection (1),
 721 subsection (3), and paragraph (b) of subsection (5) of section
 722 718.116, Florida Statutes, are amended to read:

723 718.116 Assessments; liability; lien and priority;
 724 interest; collection.-

725 (1) (a) A unit owner, regardless of how the unit owner has
 726 acquired his or her title has been acquired, including, but not
 727 limited to, ~~by~~ purchase at a foreclosure sale or ~~by~~ deed in lieu
 728 of foreclosure, is liable for all assessments that ~~which~~ come

HB 791

2015

729 due while he or she is the unit owner, including any special
730 assessments or installments on special assessments coming due
731 during the period of ownership, regardless of when the special
732 assessment was levied. Additionally, a unit owner is jointly and
733 severally liable with the previous unit owner for all unpaid
734 monthly and special assessments, interest and late fees on both
735 unpaid assessments and unpaid special assessments, and costs and
736 reasonable attorney fees incurred by the association in an
737 attempt to collect all such amounts that came due up to the time
738 of transfer of title. This joint and several liability of a
739 subsequent unit owner does not apply to an owner who acquires
740 title through purchase of a tax deed and is without prejudice to
741 any right the present unit owner may have to recover from the
742 previous unit owner the amounts paid by the present unit owner.
743 For the purposes of this section ~~paragraph~~, the term "previous
744 unit owner" does not include an association that acquires title
745 to a unit ~~delinquent property~~ through foreclosure or by deed in
746 lieu of foreclosure. A present unit owner's liability for unpaid
747 assessments, interest, late fees, and costs and reasonable
748 attorney fees is limited to any unpaid assessments, interest,
749 late fees, and costs and reasonable attorney fees that accrued
750 before the association acquired title to the unit ~~delinquent~~
751 ~~property~~ through foreclosure or by deed in lieu of foreclosure.
752 (b)1. The liability of a first mortgagee or its successor
753 or assignees who acquire title to a unit by foreclosure or by
754 deed in lieu of foreclosure for the unpaid assessments,

755 interest, late fees, costs and reasonable attorney fees, and any
 756 other fee, cost, or expense incurred by or on behalf of the
 757 association in the collection process that became due before the
 758 mortgagee's acquisition of title is limited to the lesser of:

759 a. The unit's unpaid common expenses and regular periodic
 760 assessments which accrued or came due during the 12 months
 761 immediately preceding the acquisition of title and for which
 762 payment in full has not been received by the association; or

763 b. One percent of the original mortgage debt. The
 764 provisions of this paragraph apply only if the first mortgagee
 765 joined the association as a defendant in the foreclosure action.
 766 Joinder of the association is not required if, on the date the
 767 complaint is filed, the association was dissolved or did not
 768 maintain an office or agent for service of process at a location
 769 which was known to or reasonably discoverable by the mortgagee.

770 2. An association, or its successor or assignee, that
 771 acquires title to a unit through the foreclosure of its lien for
 772 assessments is not liable for any unpaid assessments, late fees,
 773 interest, or reasonable attorney ~~attorney's~~ fees and costs that
 774 came due before the association's acquisition of title in favor
 775 of any other association, as defined in s. 718.103(2) or s.
 776 720.301(9), which holds a superior lien interest on the unit.
 777 This subparagraph is intended to clarify existing law.

778 (3) Assessments and installments on assessments which are
 779 not paid when due bear interest at the rate provided in the
 780 declaration, from the due date until paid. The rate may not

781 exceed the rate allowed by law, and, if no rate is provided in
782 the declaration, interest accrues at the rate of 18 percent per
783 year. If provided by the declaration or bylaws, the association
784 may, in addition to such interest, charge an administrative late
785 fee of up to the greater of \$25 or 5 percent of each delinquent
786 installment for which the payment is late. Any payment received
787 by an association must be applied first to any interest accrued
788 by the association, then to any administrative late fee, then to
789 any costs and reasonable attorney ~~attorney's~~ fees incurred in
790 collection, and then to the delinquent assessment. The foregoing
791 is applicable notwithstanding s. 673.3111, any purported accord
792 and satisfaction, or any restrictive endorsement, designation,
793 or instruction placed on or accompanying a payment. The
794 preceding sentence is intended to clarify existing law. A late
795 fee is not subject to chapter 687 or s. 718.303(4).

796 (5)

797 (b) To be valid, a claim of lien must state the
798 description of the condominium parcel, the name of the record
799 owner, the name and address of the association, the amount due,
800 and the due dates. It must be executed and acknowledged by an
801 officer or authorized agent of the association. The lien is not
802 effective 1 year after the claim of lien was recorded unless,
803 within that time, an action to enforce the lien is commenced.
804 The 1-year period is automatically extended for any length of
805 time during which the association is prevented from filing a
806 foreclosure action by an automatic stay resulting from a

807 bankruptcy petition filed by the parcel owner or any other
 808 person claiming an interest in the parcel. The claim of lien
 809 secures all unpaid assessments that are due and that may accrue
 810 after the claim of lien is recorded and through the entry of a
 811 final judgment, as well as interest, administrative late fees,
 812 and all reasonable costs and attorney ~~attorney's~~ fees incurred
 813 by the association incident to the collection process. Upon
 814 payment in full, the person making the payment is entitled to a
 815 satisfaction of the lien.

816 Section 8. Subsections (1) and (4) of section 718.301,
 817 Florida Statutes, are amended to read:

818 718.301 Transfer of association control; claims of defect
 819 by association.—

820 (1) If unit owners other than the developer own 15 percent
 821 or more of the units ~~in a condominium~~ that ultimately will be
 822 operated ~~ultimately~~ by an association, as provided in the
 823 declaration, articles of incorporation, or bylaws as originally
 824 recorded, the unit owners other than the developer are entitled
 825 to elect at least one-third of the members of the board of
 826 administration of the association. Unit owners other than the
 827 developer are entitled to elect at least a majority of the
 828 members of the board of administration of an association, upon
 829 the first ~~to occur of any~~ of the following events that occurs:

830 (a) Three years after 50 percent of the units that
 831 ultimately will be operated ~~ultimately~~ by the association, as
 832 provided in the declaration, articles of incorporation, or

833 bylaws as originally recorded, have been conveyed to
 834 purchasers.~~†~~

835 (b) Three months after 90 percent of the units that
 836 ultimately will be operated ~~ultimately~~ by the association, as
 837 provided in the declaration, articles of incorporation, or
 838 bylaws as originally recorded, have been conveyed to
 839 purchasers.~~†~~

840 (c) When all the units that ultimately will be operated
 841 ~~ultimately~~ by the association, as provided in the declaration,
 842 articles of incorporation, or bylaws as originally recorded,
 843 have been completed, some of them have been conveyed to
 844 purchasers, and none of the others is ~~are~~ being offered for sale
 845 by the developer in the ordinary course of business.~~†~~

846 (d) When some of the units have been conveyed to
 847 purchasers and none of the others is ~~are~~ being constructed or
 848 offered for sale by the developer in the ordinary course of
 849 business.~~†~~

850 (e) When the developer files a petition seeking protection
 851 in bankruptcy.~~†~~

852 (f) When a bulk-unit purchaser who owns a majority of the
 853 units that ultimately will be operated by the association, as
 854 provided in the declaration, articles of incorporation, or
 855 bylaws as originally recorded, files a petition seeking
 856 protection in bankruptcy.

857 (g) ~~(f)~~ When a receiver for the developer is appointed by a
 858 circuit court and is not discharged within 30 days after such

HB 791

2015

859 appointment, unless the court determines within 30 days after
860 appointment of the receiver that transfer of control would be
861 detrimental to the association or its members.~~7 or~~

862 (h) When a receiver for a bulk-unit purchaser who owns a
863 majority of the units that ultimately will be operated by the
864 association, as provided in the declaration, articles of
865 incorporation, or bylaws as originally recorded, is appointed by
866 a circuit court and is not discharged within 30 days after such
867 appointment, unless the court determines within 30 days after
868 appointment of the receiver that transfer of control would be
869 detrimental to the association or its members.

870 (i) Five years after the date of recording of the first
871 conveyance to a bulk-unit purchaser that owns a majority of the
872 units that ultimately will be operated by the association, as
873 provided in the declaration, articles of incorporation, or
874 bylaws as originally recorded. Notwithstanding that unit owners
875 other than the developer are entitled to elect a majority of the
876 members of the board of administration and notwithstanding s.
877 718.112(2)(f)2., 5 years after the date of recording of the
878 first conveyance of a unit to a bulk-unit purchaser that owns a
879 majority of the units, the bulk-unit purchaser may exercise the
880 right to vote for each unit owned by the bulk-unit purchaser in
881 the same manner as any other unit owner except for the purposes
882 of reacquiring control of the association or electing or
883 appointing a majority of the members of the board of
884 administration.

885 (j)~~(g)~~ Seven years after the date of the recording of the
 886 certificate of a surveyor and mapper pursuant to s.
 887 718.104(4) (e) or the recording of an instrument that transfers
 888 title to a unit in the condominium which is not accompanied by a
 889 recorded assignment of developer rights in favor of the grantee
 890 of such unit, whichever occurs first; or, in the case of an
 891 association that ~~may~~ ultimately may operate more than one
 892 condominium, 7 years after the date of the recording of the
 893 certificate of a surveyor and mapper pursuant to s.
 894 718.104(4) (e) or the recording of an instrument that transfers
 895 title to a unit which is not accompanied by a recorded
 896 assignment of developer rights in favor of the grantee of such
 897 unit, whichever occurs first, for the first condominium it
 898 operates; or, in the case of an association operating a phase
 899 condominium created pursuant to s. 718.403, 7 years after the
 900 date of the recording of the certificate of a surveyor and
 901 mapper pursuant to s. 718.104(4) (e) or the recording of an
 902 instrument that transfers title to a unit which is not
 903 accompanied by a recorded assignment of developer rights in
 904 favor of the grantee of such unit, whichever occurs first.

905
 906 The developer is entitled to elect at least one member of the
 907 board of administration of an association as long as the
 908 developer holds for sale in the ordinary course of business at
 909 least 5 percent, in condominiums with fewer than 500 units, and
 910 2 percent, in condominiums with more than 500 units, of the

HB 791

2015

911 units in a condominium operated by the association. After the
912 developer relinquishes control of the association, the developer
913 may exercise the right to vote any developer-owned units in the
914 same manner as any other unit owner except for purposes of
915 reacquiring control of the association or selecting a ~~the~~
916 majority of the members of the board of administration.

917 (4) At the time that unit owners other than the developer
918 elect a majority of the members of the board of administration
919 of an association, the developer or bulk-unit purchaser shall
920 relinquish control of the association, and the unit owners shall
921 accept control. Simultaneously, or for the purposes of paragraph
922 (c) not more than 90 days thereafter, the developer or bulk-unit
923 purchaser shall deliver to the association, at the developer's
924 or bulk-unit purchaser's expense, all property of the unit
925 owners and of the association which is held or controlled by the
926 developer or bulk-unit purchaser, including, but not limited to,
927 the following items, if applicable, as to each condominium
928 operated by the association:

929 (a)1. The original or a photocopy of the recorded
930 declaration of condominium and all amendments thereto. If a
931 photocopy is provided, it must be certified by affidavit of the
932 developer, a bulk-unit purchaser, or an officer or agent of the
933 developer or bulk-unit purchaser as being a complete copy of the
934 actual recorded declaration.

935 2. A certified copy of the articles of incorporation of
936 the association or, if the association was created before ~~prior~~

937 ~~to~~ the effective date of this act and it is not incorporated,
938 copies of the documents creating the association.

939 3. A copy of the bylaws.

940 4. The minute books, including all minutes, and other
941 books and records of the association, if any.

942 5. Any house rules and regulations that have been adopted
943 ~~promulgated~~.

944 (b) Resignations of officers and members of the board of
945 administration who are required to resign because the developer
946 or bulk-unit purchaser is required to relinquish control of the
947 association.

948 (c) The financial records, including financial statements
949 of the association, and source documents from the incorporation
950 of the association through the date of turnover. The records
951 must be audited for the period from the incorporation of the
952 association or from the period covered by the last audit, if an
953 audit has been performed for each fiscal year since
954 incorporation, by an independent certified public accountant.
955 All financial statements must be prepared in accordance with
956 generally accepted accounting principles and must be audited in
957 accordance with generally accepted auditing standards, as
958 prescribed by the Florida Board of Accountancy, pursuant to
959 chapter 473. The accountant performing the audit shall examine
960 to the extent necessary supporting documents and records,
961 including the cash disbursements and related paid invoices, to
962 determine whether ~~if~~ expenditures were for association purposes

963 and the billings, cash receipts, and related records to
964 determine whether ~~that~~ the developer or bulk-unit purchaser was
965 charged and paid the proper amounts of assessments.

966 (d) Association funds or control thereof.

967 (e) All tangible personal property that is property of the
968 association, which is represented by the developer or bulk-unit
969 purchaser to be part of the common elements or which is
970 ostensibly part of the common elements, and an inventory of that
971 property.

972 (f) A copy of the plans and specifications used ~~utilized~~
973 in the construction or remodeling of improvements and the
974 supplying of equipment to the condominium and in the
975 construction and installation of all mechanical components
976 serving the improvements and the site with a certificate in
977 affidavit form of the developer, the bulk-unit purchaser, or the
978 developer's or bulk-unit purchaser's agent or an architect or
979 engineer authorized to practice in this state that such plans
980 and specifications represent, to the best of his or her
981 knowledge and belief, the actual plans and specifications used
982 ~~utilized~~ in the construction and improvement of the condominium
983 property and for the construction and installation of the
984 mechanical components serving the improvements. If the
985 condominium property has been declared a condominium more than 3
986 years after the completion of construction or remodeling of the
987 improvements, ~~the requirements of this paragraph~~ does ~~do~~ not
988 apply.

989 (g) A list of the names and addresses of all contractors,
 990 subcontractors, and suppliers used ~~utilized~~ in the construction
 991 or remodeling of the improvements and in the landscaping of the
 992 condominium or association property which the developer or bulk-
 993 unit purchaser had knowledge of at any time in the development
 994 of the condominium.

995 (h) Insurance policies.

996 (i) Copies of any certificates of occupancy that may have
 997 been issued for the condominium property.

998 (j) Any other permits applicable to the condominium
 999 property which have been issued by governmental bodies and are
 1000 in force or were issued within 1 year before ~~prior to~~ the date
 1001 the unit owners other than the developer or bulk-unit purchaser
 1002 took control of the association.

1003 (k) All written warranties of the contractor,
 1004 subcontractors, suppliers, and manufacturers, if any, that are
 1005 still effective.

1006 (l) A roster of unit owners and their addresses and
 1007 telephone numbers, if known, as shown on the developer's or
 1008 bulk-unit purchaser's records.

1009 (m) Leases of the common elements and other leases to
 1010 which the association is a party.

1011 (n) Employment contracts or service contracts in which the
 1012 association is one of the contracting parties or service
 1013 contracts in which the association or the unit owners have an
 1014 obligation or responsibility, directly or indirectly, to pay

1015 some or all of the fee or charge of the person or persons
 1016 performing the service.

1017 (o) All other contracts to which the association is a
 1018 party.

1019 (p) A report included in the official records, under seal
 1020 of an architect or engineer authorized to practice in this
 1021 state, attesting to required maintenance, useful life, and
 1022 replacement costs of the following applicable common elements
 1023 comprising a turnover inspection report:

- 1024 1. Roof.
- 1025 2. Structure.
- 1026 3. Fireproofing and fire protection systems.
- 1027 4. Elevators.
- 1028 5. Heating and cooling systems.
- 1029 6. Plumbing.
- 1030 7. Electrical systems.
- 1031 8. Swimming pool or spa and equipment.
- 1032 9. Seawalls.
- 1033 10. Pavement and parking areas.
- 1034 11. Drainage systems.
- 1035 12. Painting.
- 1036 13. Irrigation systems.

1037 (q) A copy of the certificate of a surveyor and mapper
 1038 recorded pursuant to s. 718.104(4)(e) or the recorded instrument
 1039 that transfers title to a unit in the condominium which is not
 1040 accompanied by a recorded assignment of developer or bulk-unit

1041 purchaser rights in favor of the grantee of such unit, whichever
 1042 occurred first.

1043 Section 9. Subsections (1) through (4) of section 718.302,
 1044 Florida Statutes, are amended to read:

1045 718.302 Agreements entered into by the association.—

1046 (1) A ~~Any~~ grant or reservation made by a declaration,
 1047 lease, or other document, and a ~~any~~ contract made by an
 1048 association before ~~prior to~~ assumption of control of the
 1049 association by unit owners other than the developer, a bulk-unit
 1050 purchaser, or a lender-unit purchaser, which ~~that~~ provides for
 1051 operation, maintenance, or management of a condominium
 1052 association or property serving the unit owners of a condominium
 1053 must ~~shall~~ be fair and reasonable, and such grant, reservation,
 1054 or contract may be canceled by unit owners other than the
 1055 developer or a bulk-unit purchaser. A lender-unit purchaser may
 1056 not vote on cancellation of a grant, reservation, or contract
 1057 made by the association while the association is under control
 1058 of that lender-unit purchaser.‡

1059 (a) If the association operates only one condominium and
 1060 the unit owners other than the developer, a bulk-unit purchaser,
 1061 or a lender-unit purchaser have assumed control of the
 1062 association, or if the unit owners other than the developer, a
 1063 bulk-unit purchaser, or a lender-unit purchaser own at least ~~not~~
 1064 ~~less than~~ 75 percent of the voting interests in the condominium,
 1065 the cancellation shall be by concurrence of the owners of at
 1066 least ~~not less than~~ 75 percent of the voting interests other

1067 than the voting interests owned by the developer, a bulk-unit
1068 purchaser, or a lender-unit purchaser. If a grant, reservation,
1069 or contract is so canceled and the unit owners other than the
1070 developer or a bulk-unit purchaser have not assumed control of
1071 the association, the association shall make a new contract or
1072 otherwise provide for maintenance, management, or operation in
1073 lieu of the canceled obligation, at the direction of the owners
1074 of ~~not less than~~ a majority of the voting interests in the
1075 condominium other than the voting interests owned by the
1076 developer, a bulk-unit purchaser, or a lender-unit purchaser.

1077 (b) If the association operates more than one condominium
1078 and the unit owners other than the developer, a bulk-unit
1079 purchaser, or a lender-unit purchaser have not assumed control
1080 of the association, and if the unit owners other than the
1081 developer or a bulk-unit purchaser own at least 75 percent of
1082 the voting interests in a condominium operated by the
1083 association, any grant, reservation, or contract for
1084 maintenance, management, or operation of buildings containing
1085 the units in that condominium or of improvements used only by
1086 the unit owners of that condominium may be canceled by
1087 concurrence of the owners of at least 75 percent of the voting
1088 interests in the condominium other than the voting interests
1089 owned by the developer or a bulk-unit purchaser. A ~~No~~ grant,
1090 reservation, or contract for maintenance, management, or
1091 operation of recreational areas or any other property serving
1092 more than one condominium, and operated by more than one

HB 791

2015

1093 association, may not be canceled except pursuant to paragraph
 1094 (d).

1095 (c) If the association operates more than one condominium
 1096 and the unit owners other than the developer, a bulk-unit
 1097 purchaser, or a lender-unit purchaser have assumed control of
 1098 the association, the cancellation shall be by concurrence of the
 1099 owners of at least ~~not less than~~ 75 percent of the total number
 1100 of voting interests in all condominiums operated by the
 1101 association other than the voting interests owned by the
 1102 developer or a bulk-unit purchaser.

1103 (d) If the owners of units in a condominium have the right
 1104 to use property in common with owners of units in other
 1105 condominiums and those condominiums are operated by more than
 1106 one association, a ~~no~~ grant, reservation, or contract for
 1107 maintenance, management, or operation of the property serving
 1108 more than one condominium may not be canceled until the unit
 1109 owners other than the developer, a bulk-unit purchaser, or a
 1110 lender-unit purchaser have assumed control of all of the
 1111 associations operating the condominiums that are to be served by
 1112 the recreational area or other property, after which
 1113 cancellation may be effected by concurrence of the owners of at
 1114 least ~~not less than~~ 75 percent of the total number of voting
 1115 interests in those condominiums other than voting interests
 1116 owned by the developer, a bulk-unit purchaser, or a lender-unit
 1117 purchaser.

1118 (2) A ~~Any~~ grant or reservation made by a declaration,

1119 | lease, or other document, or a ~~any~~ contract made by the
 1120 | developer or association before ~~prior to the time when~~ unit
 1121 | owners other than the developer or a bulk-unit purchaser elect a
 1122 | majority of the board of administration, which grant,
 1123 | reservation, or contract requires the association to purchase
 1124 | condominium property or to lease condominium property to another
 1125 | party, shall be deemed ratified unless rejected by a majority of
 1126 | the voting interests of the unit owners other than the developer
 1127 | or a bulk-unit purchaser within 18 months after the unit owners
 1128 | other than the developer or a bulk-unit purchaser elect a
 1129 | majority of the board of administration. A lender-unit purchaser
 1130 | may not vote on cancellation of a grant, reservation, or
 1131 | contract made by the association while the association is under
 1132 | control of that lender-unit purchaser. This subsection does not
 1133 | apply to a ~~any~~ grant or reservation made by a declaration under
 1134 | which ~~whereby~~ persons other than the developer or the
 1135 | developer's or bulk-unit purchaser's heirs, assigns, affiliates,
 1136 | directors, officers, or employees are granted the right to use
 1137 | the condominium property, if ~~so long as~~ such persons are
 1138 | obligated to pay at least, ~~at a minimum,~~ a proportionate share
 1139 | of the cost associated with such property.

1140 | (3) A ~~Any~~ grant or reservation made by a declaration,
 1141 | lease, or other document, and a ~~any~~ contract made by an
 1142 | association, whether before or after assumption of control of
 1143 | the association by unit owners other than the developer, a bulk-
 1144 | unit purchaser, or a lender-unit purchaser, which ~~that~~ provides

1145 for operation, maintenance, or management of a condominium
 1146 association or property serving the unit owners of a condominium
 1147 may ~~shall~~ not ~~be in~~ conflict with the powers and duties of the
 1148 association or the rights of the unit owners as provided in this
 1149 chapter. This subsection is intended only as a clarification of
 1150 existing law.

1151 (4) A ~~Any~~ grant or reservation made by a declaration,
 1152 lease, or other document, and a ~~any~~ contract made by an
 1153 association before ~~prior to~~ assumption of control of the
 1154 association by unit owners other than the developer, a bulk-unit
 1155 purchaser, or a lender-unit purchaser, must ~~shall~~ be fair and
 1156 reasonable.

1157 Section 10. Subsections (3), (4), and (5) of section
 1158 718.303, Florida Statutes, are amended, and subsection (7) is
 1159 added to that section, to read:

1160 718.303 Obligations of owners and occupants; remedies.—

1161 (3) The association may levy reasonable fines for the
 1162 failure of the owner of the unit or its occupant, licensee, or
 1163 invitee to comply with any provision of the declaration, the
 1164 association bylaws, or reasonable rules of the association. A
 1165 fine may not become a lien against a unit. A fine may be levied
 1166 by the board or its authorized designee on the basis of each day
 1167 of a continuing violation, with a single notice and opportunity
 1168 for hearing before an impartial committee as provided in
 1169 paragraph (b). However, the fine may not exceed \$100 per
 1170 violation, or \$1,000 in the aggregate.

HB 791

2015

1171 (a) An association may suspend, for a reasonable period of
1172 time, the right of a unit owner, or a unit owner's tenant,
1173 guest, or invitee, to use the common elements, common
1174 facilities, or any other association property for failure to
1175 comply with any provision of the declaration, the association
1176 bylaws, or reasonable rules of the association. This paragraph
1177 does not apply to limited common elements intended to be used
1178 only by that unit, common elements needed to access the unit,
1179 utility services provided to the unit, parking spaces, or
1180 elevators.

1181 (b) A fine or suspension levied by the board of
1182 administration or its authorized designee may not be imposed
1183 unless the board association first provides at least 14 days'
1184 written notice and an opportunity for a hearing to the unit
1185 owner and, if applicable, its occupant, licensee, or invitee.
1186 The hearing must be held before an impartial ~~a~~ committee of
1187 other unit owners who are neither board members, ~~nor~~ persons
1188 residing in a board member's household, nor persons residing in
1189 the household of a board member's authorized designee. The role
1190 of the impartial committee is limited to determining whether to
1191 confirm or reject the fine or suspension levied by the board. If
1192 the impartial committee does not agree, the fine or suspension
1193 may not be imposed.

1194 (4) If a unit owner is more than 90 days delinquent in
1195 paying a fee, fine, or other monetary obligation due to the
1196 association, the association may suspend the right of the unit

1197 owner or the unit's occupant, licensee, or invitee to use common
 1198 elements, common facilities, or any other association property
 1199 until the fee, fine, or other monetary obligation is paid in
 1200 full. This subsection does not apply to limited common elements
 1201 intended to be used only by that unit, common elements needed to
 1202 access the unit, utility services provided to the unit, parking
 1203 spaces, or elevators. The notice and hearing requirements under
 1204 subsection (3) do not apply to suspensions imposed under this
 1205 subsection.

1206 (5) An association may suspend the voting rights of a unit
 1207 or member due to nonpayment of any fee, fine, or other monetary
 1208 obligation due to the association which is more than 90 days
 1209 delinquent. A voting interest or consent right allocated to a
 1210 unit or member which has been suspended by the association shall
 1211 be subtracted from ~~may not be counted towards~~ the total number
 1212 of voting interests in the association, which shall be reduced
 1213 by the number of suspended voting interests when calculating the
 1214 total percentage or number of all voting interests available to
 1215 take or approve any action, and the suspended voting interests
 1216 shall not be considered for any purpose, including, but not
 1217 limited to, the percentage or number of voting interests
 1218 necessary to constitute a quorum, the percentage or number of
 1219 voting interests required to conduct an election, or the
 1220 percentage or number of voting interests required to approve an
 1221 action under this chapter or pursuant to the declaration,
 1222 articles of incorporation, or bylaws. The suspension ends upon

1223 full payment of all obligations currently due or overdue the
 1224 association. The notice and hearing requirements under
 1225 subsection (3) do not apply to a suspension imposed under this
 1226 subsection.

1227 (7) The suspensions permitted by paragraph (3)(a) and
 1228 subsections (4) and (5) apply to a member and, when appropriate,
 1229 the member's tenants, guests, or invitees, even if the
 1230 delinquency or failure that resulted in the suspension arose
 1231 from less than all of the multiple units owned by a member.

1232 Section 11. Subsection (1) of section 718.501, Florida
 1233 Statutes, is amended to read:

1234 718.501 Authority, responsibility, and duties of Division
 1235 of Florida Condominiums, Timeshares, and Mobile Homes.—

1236 (1) The division may enforce and ensure compliance with
 1237 ~~the provisions of~~ this chapter and rules relating to the
 1238 development, construction, sale, lease, ownership, operation,
 1239 and management of residential condominium units. In performing
 1240 its duties, the division has complete jurisdiction to
 1241 investigate complaints and enforce compliance with respect to
 1242 associations that are still under the control of the developer,
 1243 the control of a bulk-unit purchaser or lender-unit purchaser,
 1244 or the control of a bulk assignee or bulk buyer pursuant to part
 1245 VII of this chapter and complaints against developers, bulk-unit
 1246 purchasers, lender-unit purchasers, bulk assignees, or bulk
 1247 buyers involving improper turnover or failure to turnover,
 1248 pursuant to s. 718.301. However, after turnover has occurred,

HB 791

2015

1249 the division has jurisdiction to investigate only complaints
1250 related ~~only~~ to financial issues, elections, and unit owner
1251 access to association records pursuant to s. 718.111(12).

1252 (a)1. The division may make necessary public or private
1253 investigations within or outside this state to determine whether
1254 any person has violated this chapter or any rule or order
1255 hereunder, to aid in the enforcement of this chapter, or to aid
1256 in the adoption of rules or forms.

1257 2. The division may submit any official written report,
1258 worksheet, or other related paper, or a duly certified copy
1259 thereof, compiled, prepared, drafted, or otherwise made by and
1260 duly authenticated by a financial examiner or analyst to be
1261 admitted as competent evidence in any hearing in which the
1262 financial examiner or analyst is available for cross-examination
1263 and attests under oath that such documents were prepared as a
1264 result of an examination or inspection conducted pursuant to
1265 this chapter.

1266 (b) The division may require or permit any person to file
1267 a statement in writing, under oath or otherwise, as the division
1268 determines, as to the facts and circumstances concerning a
1269 matter to be investigated.

1270 (c) For the purpose of any investigation under this
1271 chapter, the division director or any officer or employee
1272 designated by the division director may administer oaths or
1273 affirmations, subpoena witnesses and compel their attendance,
1274 take evidence, and require the production of any matter that

1275 ~~which~~ is relevant to the investigation, including the existence,
 1276 description, nature, custody, condition, and location of any
 1277 books, documents, or other tangible things and the identity and
 1278 location of persons having knowledge of relevant facts or any
 1279 other matter reasonably calculated to lead to the discovery of
 1280 material evidence. Upon the failure of ~~by~~ a person to obey a
 1281 subpoena or to answer questions propounded by the investigating
 1282 officer and upon reasonable notice to all affected persons, the
 1283 division may apply to the circuit court for an order compelling
 1284 compliance.

1285 (d) Notwithstanding any remedies available to unit owners
 1286 and associations, if the division has reasonable cause to
 1287 believe that a violation of ~~any provision of~~ this chapter or a
 1288 related rule has occurred, the division may institute
 1289 enforcement proceedings in its own name against any developer,
 1290 bulk-unit purchaser, lender-unit purchaser, bulk assignee, bulk
 1291 buyer, association, officer, or member of the board of
 1292 administration, or his or her ~~its~~ assignees or agents, as
 1293 follows:

1294 1. The division may permit a person whose conduct or
 1295 actions may be under investigation to waive formal proceedings
 1296 and enter into a consent proceeding under which ~~whereby~~ orders,
 1297 rules, or letters of censure or warning, whether formal or
 1298 informal, may be entered against the person.

1299 2. The division may issue an order requiring the
 1300 developer, bulk-unit purchaser, lender-unit purchaser, bulk

1301 assignee, bulk buyer, association, developer-designated officer,
1302 or developer-designated member of the board of administration,
1303 or his or her ~~developer-designated~~ assignees or agents, the bulk
1304 ~~assignee-designated assignees or agents, bulk buyer-designated~~
1305 ~~assignees or agents,~~ community association manager, or the
1306 ~~community association~~ management firm to cease and desist from
1307 the unlawful practice and take such affirmative action as in the
1308 judgment of the division to carry out the purposes of this
1309 chapter. If the division finds that a developer, bulk-unit
1310 purchaser, lender-unit purchaser, bulk assignee, bulk buyer,
1311 association, officer, or member of the board of administration,
1312 or his or her ~~its~~ assignees or agents, is violating or is about
1313 to violate ~~any provision of~~ this chapter, any rule adopted or
1314 order issued by the division, or any written agreement entered
1315 into with the division~~,~~ and the violation presents an immediate
1316 danger to the public requiring an immediate final order, it may
1317 issue an emergency cease and desist order reciting with
1318 particularity the facts underlying such findings. The emergency
1319 cease and desist order is effective for 90 days. If the division
1320 begins nonemergency cease and desist proceedings, the emergency
1321 cease and desist order remains effective until the conclusion of
1322 the proceedings under ss. 120.569 and 120.57.

1323 3. If a developer, bulk-unit purchaser, lender-unit
1324 purchaser, bulk assignee, or bulk buyer~~,~~ fails to pay ~~any~~
1325 restitution determined by the division to be owed and, ~~plus~~ any
1326 accrued interest charged at the highest rate permitted by law,

HB 791

2015

1327 within 30 days after expiration of any appellate time period of
1328 a final order requiring payment of restitution or the conclusion
1329 of any appeal thereof, whichever is later, the division shall
1330 ~~must~~ bring an action in circuit or county court on behalf of any
1331 association, class of unit owners, lessees, or purchasers for
1332 restitution, declaratory relief, injunctive relief, or any other
1333 available remedy. The division may also temporarily revoke its
1334 acceptance of the filing for the developer, bulk-unit purchaser,
1335 or lender-unit purchaser, to which the restitution relates until
1336 payment of restitution is made.

1337 4. The division may petition the court for appointment of
1338 a receiver or conservator who, ~~if appointed, the receiver or~~
1339 ~~conservator~~ may take action to implement the court order to
1340 ensure the performance of the order and to remedy any breach
1341 thereof. In addition to all other means provided by law for the
1342 enforcement of an injunction or temporary restraining order, the
1343 circuit court may impound or sequester the property of a party
1344 defendant, including books, papers, documents, and related
1345 records, and allow the examination and use of the property by
1346 the division and a court-appointed receiver or conservator.

1347 5. The division may apply to the circuit court for an
1348 order of restitution under which ~~whereby~~ the defendant in an
1349 action brought pursuant to subparagraph 4. is ordered to make
1350 restitution of those sums shown by the division to have been
1351 obtained by the defendant in violation of this chapter. At the
1352 option of the court, such restitution is payable to the

1353 conservator or receiver appointed pursuant to subparagraph 4. or
 1354 directly to the persons whose funds or assets were obtained in
 1355 violation of this chapter.

1356 6. The division may impose a civil penalty against a
 1357 developer, bulk-unit purchaser, lender-unit purchaser, bulk
 1358 assignee, ~~or~~ bulk buyer, or association, or its assignee or
 1359 agent, for a ~~any~~ violation of this chapter or a related rule.
 1360 The division may impose a civil penalty individually against an
 1361 officer or board member who willfully and knowingly violates ~~a~~
 1362 ~~provision of~~ this chapter, an adopted rule, or a final order of
 1363 the division; may order the removal of such individual as an
 1364 officer or from the board of administration or as an officer of
 1365 the association; and may prohibit such individual from serving
 1366 as an officer or on the board of a community association for a
 1367 period of time. The term "willfully and knowingly" means that
 1368 the division informed the officer or board member that his or
 1369 her action or intended action violates this chapter, a rule
 1370 adopted under this chapter, or a final order of the division and
 1371 that the officer or board member refused to comply with ~~the~~
 1372 ~~requirements of~~ this chapter, a rule adopted under this chapter,
 1373 or a final order of the division. ~~The division,~~ Before
 1374 initiating formal agency action under chapter 120, the division
 1375 must afford the officer or board member an opportunity to
 1376 voluntarily comply, and an officer or board member who complies
 1377 within 10 days is not subject to a civil penalty. A penalty may
 1378 be imposed on the basis of each day of continuing violation, but

1379 | the penalty for any offense may not exceed \$5,000. ~~By January 1,~~
 1380 | ~~1998,~~ The division shall adopt, by rule, penalty guidelines
 1381 | applicable to possible violations or to categories of violations
 1382 | of this chapter or rules adopted by the division. The guidelines
 1383 | must specify a meaningful range of civil penalties for each such
 1384 | violation of the statute and rules and must be based upon the
 1385 | harm caused by the violation, the repetition of the violation,
 1386 | and upon such other factors deemed relevant by the division. ~~For~~
 1387 | ~~example,~~ The division may consider whether the violations were
 1388 | committed by a developer, bulk-unit purchaser, lender-unit
 1389 | purchaser, bulk assignee, or bulk buyer, or owner-controlled
 1390 | association, the size of the association, and other factors. The
 1391 | guidelines must designate the possible mitigating or aggravating
 1392 | circumstances that justify a departure from the range of
 1393 | penalties provided by the rules. It is the legislative intent
 1394 | that minor violations be distinguished from those that ~~which~~
 1395 | endanger the health, safety, or welfare of ~~the~~ condominium
 1396 | residents or other persons and that such guidelines provide
 1397 | reasonable and meaningful notice to the public of likely
 1398 | penalties that may be imposed for proscribed conduct. This
 1399 | subsection does not limit the ability of the division to
 1400 | informally dispose of administrative actions or complaints by
 1401 | stipulation, agreed settlement, or consent order. All amounts
 1402 | collected shall be deposited with the Chief Financial Officer to
 1403 | the credit of the Division of Florida Condominiums, Timeshares,
 1404 | and Mobile Homes Trust Fund. If a developer, bulk-unit

HB 791

2015

1405 purchaser, lender-unit purchaser, bulk assignee, or bulk buyer
1406 fails to pay the civil penalty and the amount deemed to be owed
1407 to the association, the division shall issue an order directing
1408 that such developer, bulk-unit purchaser, lender-unit purchaser,
1409 bulk assignee, or bulk buyer cease and desist from further
1410 operation until such time as the civil penalty is paid or may
1411 pursue enforcement of the penalty in a court of competent
1412 jurisdiction. If an association fails to pay the civil penalty,
1413 the division shall pursue enforcement in a court of competent
1414 jurisdiction, and the order imposing the civil penalty or the
1415 cease and desist order is not effective until 20 days after the
1416 date of such order. Any action commenced by the division shall
1417 be brought in the county in which the division has its executive
1418 offices or in the county where the violation occurred.

1419 7. If a unit owner presents the division with proof that
1420 the unit owner has requested access to official records in
1421 writing by certified mail, and that after 10 days the unit owner
1422 again made the same request for access to official records in
1423 writing by certified mail, and that more than 10 days has
1424 elapsed since the second request and the association has still
1425 failed or refused to provide access to official records as
1426 required by this chapter, the division shall issue a subpoena
1427 requiring production of the requested records where the records
1428 are kept pursuant to s. 718.112.

1429 8. In addition to subparagraph 6., the division may seek
1430 the imposition of a civil penalty through the circuit court for

1431 any violation for which the division may issue a notice to show
1432 cause under paragraph (r). The civil penalty shall be at least
1433 \$500 but no more than \$5,000 for each violation. The court may
1434 also award to the prevailing party court costs and reasonable
1435 attorney ~~attorney's~~ fees and, if the division prevails, may also
1436 award reasonable costs of investigation.

1437 (e) The division may prepare and disseminate a prospectus
1438 and other information to assist prospective owners, purchasers,
1439 lessees, and developers of residential condominiums in assessing
1440 the rights, privileges, and duties pertaining thereto.

1441 (f) The division may adopt rules to administer and enforce
1442 ~~the provisions of~~ this chapter.

1443 (g) The division shall establish procedures for providing
1444 notice to an association and the developer, bulk-unit purchaser,
1445 lender-unit purchaser, bulk assignee, or bulk buyer during the
1446 period in which the developer, bulk-unit purchaser, lender-unit
1447 purchaser, bulk assignee, or bulk buyer controls the association
1448 if the division is considering the issuance of a declaratory
1449 statement with respect to the declaration of condominium or any
1450 related document governing such condominium community.

1451 (h) The division shall furnish each association that pays
1452 the fees required by paragraph (2) (a) a copy of this chapter, as
1453 amended, and the rules adopted thereto on an annual basis.

1454 (i) The division shall annually provide each association
1455 with a summary of declaratory statements and formal legal
1456 opinions relating to the operations of condominiums which were

1457 rendered by the division during the previous year.

1458 (j) The division shall provide training and educational
1459 programs for condominium association board members and unit
1460 owners. The training may, at ~~in~~ the division's discretion,
1461 include web-based electronic media~~7~~ and live training and
1462 seminars in various locations throughout the state. The division
1463 may review and approve education and training programs for board
1464 members and unit owners offered by providers, and shall maintain
1465 a current list of approved programs and providers, and shall
1466 make such list available to board members and unit owners in a
1467 reasonable and cost-effective manner.

1468 (k) The division shall maintain a toll-free telephone
1469 number accessible to condominium unit owners.

1470 (l) The division shall develop a program to certify both
1471 volunteer and paid mediators to provide mediation of condominium
1472 disputes. Upon request, the division shall provide~~, upon~~
1473 ~~request,~~ a list of such mediators to any association, unit
1474 owner, or other participant in arbitration proceedings under s.
1475 718.1255 requesting a copy of the list. The division shall
1476 include on the list of volunteer mediators only the names of
1477 individuals ~~persons~~ who have received at least 20 hours of
1478 training in mediation techniques or who have mediated at least
1479 20 disputes. In order to become initially certified by the
1480 division, paid mediators must be certified by the Supreme Court
1481 to mediate court cases in county or circuit courts. However, the
1482 division may adopt, by rule, additional factors for the

HB 791

2015

1483 certification of paid mediators, which must be related to
1484 experience, education, or background. In order to continue to be
1485 certified, an individual ~~Any person~~ initially certified as a
1486 paid mediator by the division ~~must, in order to continue to be~~
1487 ~~certified,~~ comply with the factors or requirements adopted by
1488 rule.

1489 (m) If a complaint is made, the division shall ~~must~~
1490 conduct its inquiry with due regard for the interests of the
1491 affected parties. Within 30 days after receipt of a complaint,
1492 the division shall acknowledge the complaint in writing and
1493 notify the complainant as to whether the complaint is within the
1494 jurisdiction of the division and whether additional information
1495 is needed by the division from the complainant. The division
1496 shall conduct its investigation and, within 90 days after
1497 receipt of the original complaint or of timely requested
1498 additional information, take action upon the complaint. However,
1499 the failure to complete the investigation within 90 days does
1500 not prevent the division from continuing the investigation,
1501 accepting or considering evidence obtained or received after 90
1502 days, or taking administrative action if reasonable cause exists
1503 to believe that a violation of this chapter or a rule has
1504 occurred. If an investigation is not completed within the time
1505 limits established in this paragraph, the division shall, on a
1506 monthly basis, notify the complainant in writing of the status
1507 of the investigation. When reporting its action to the
1508 complainant, the division shall inform the complainant of any

1509 right to a hearing pursuant to ss. 120.569 and 120.57.

1510 (n) Condominium association directors, officers, and
1511 employees; condominium developers; bulk-unit purchasers, lender-
1512 unit purchasers, bulk assignees, bulk buyers, and community
1513 association managers; and community association management firms
1514 have an ongoing duty to reasonably cooperate with the division
1515 in any investigation pursuant to this section. The division
1516 shall refer to local law enforcement authorities any person who
1517 ~~whom~~ the division believes has altered, destroyed, concealed, or
1518 removed any record, document, or thing required to be kept or
1519 maintained by this chapter with the purpose to impair its verity
1520 or availability in the department's investigation.

1521 (o) The division may:

- 1522 1. Contract with agencies in this state or other
- 1523 jurisdictions to perform investigative functions; or
- 1524 2. Accept grants-in-aid from any source.

1525 (p) The division shall cooperate with similar agencies in
1526 other jurisdictions to establish uniform filing procedures and
1527 forms, public offering statements, advertising standards, and
1528 rules and common administrative practices.

1529 (q) The division shall consider notice to a developer,
1530 bulk-unit purchaser, lender-unit purchaser, bulk assignee, or
1531 bulk buyer to be complete when it is delivered to the address of
1532 the developer, bulk-unit purchaser, lender-unit purchaser, bulk
1533 assignee, or bulk buyer currently on file with the division.

1534 (r) In addition to its enforcement authority, the division

1535 may issue a notice to show cause, which must provide for a
 1536 hearing, upon written request, in accordance with chapter 120.

1537 (s) The division shall submit to the Governor, the
 1538 President of the Senate, the Speaker of the House of
 1539 Representatives, and the chairs of the legislative
 1540 appropriations committees an annual report that includes, but
 1541 need not be limited to, the number of training programs provided
 1542 for condominium association board members and unit owners;~~;~~ the
 1543 number of complaints received, by type; the number and percent
 1544 of complaints acknowledged in writing within 30 days and the
 1545 number and percent of investigations acted upon within 90 days
 1546 in accordance with paragraph (m);~~;~~ and the number of
 1547 investigations exceeding the 90-day requirement. The annual
 1548 report must also include an evaluation of the division's core
 1549 business processes and make recommendations for improvements,
 1550 including statutory changes. The report shall be submitted by
 1551 September 30 following the end of the fiscal year.

1552 Section 12. Section 718.709, Florida Statutes, is created
 1553 to read:

1554 718.709 Applicability.—Sections 718.701-718.708, relating
 1555 to the Distressed Condominium Relief Act, apply to title to
 1556 units acquired on or after July 1, 2010, but before July 1,
 1557 2016.

1558 Section 13. Part VIII of chapter 718, Florida Statutes,
 1559 consisting of sections 718.801-718.812, is created to read:

1560 PART VIII

BULK-UNIT PURCHASERS AND LENDER-UNIT PURCHASERS

718.801 Legislative intent.—The Legislature declares 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. Notwithstanding the limitation, the Distressed Condominium Relief Act applies to title acquired on or after July 1, 2010, but before July 1, 2016.

718.802 Definitions.—As used in this part:

(1) "Bulk-unit purchaser" means 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, as provided in the declaration, articles of incorporation, or bylaws as originally recorded. Multiple bulk-unit purchasers may be members of an association simultaneously or successively. There may be one or more bulk-unit purchasers while the developer still owns units operated by the association. The term does not include a lender-unit purchaser. Further, the term does not include an acquirer of units if any transfer of title to the acquirer is made:

(a) With intent to defraud or materially harm a purchaser, a unit owner, or the association;

(b) Where the acquirer is a person or limited liability

1587 company that would be an insider, as defined in s. 726.102, of
 1588 the bulk-unit purchaser or of the developer; or

1589 (c) As a fraudulent transfer under chapter 726.

1590 (2) "Bulk assignee" means a person who is not a bulk buyer
 1591 and who:

1592 (a) Acquires more than seven condominium parcels in a
 1593 single condominium;

1594 (b) Receives an assignment of any of the developer rights,
 1595 other than or in addition to those rights described in
 1596 subsection (3), as set forth in the declaration of condominium
 1597 or this chapter:

1598 1. By a written instrument recorded as part of or as an
 1599 exhibit of the deed;

1600 2. By a separate instrument recorded in the public records
 1601 of the county in which the condominium is located; or

1602 3. Pursuant to a final judgment or certificate of title
 1603 issued in favor of a purchaser at a foreclosure sale; and

1604 (c) Acquired condominium parcels on or after July 1, 2010,
 1605 but before July 1, 2016. The date of such acquisition shall be
 1606 determined by the date of recoding a deed or other instrument of
 1607 conveyance for such parcels in the public records of the county
 1608 in which the condominium is located, or by the date of issuing a
 1609 certificate of title in a foreclosure proceeding with respect to
 1610 such condominium parcels.

1611
 1612 A mortgagee or its assignee may not be deemed a bulk assignee or

1613 developer by reason of the acquisition of condominium units and
1614 receipt of an assignment of some or all of a developer's rights
1615 unless the mortgage or its assignee exercises any of the
1616 developer rights other than those described in subsection (3).

1617 (3) "Bulk buyer" means a person who acquired condominium
1618 parcels on or after July 1, 2010, but before July 1, 2016, and
1619 the date of acquisition shall be determined in the same manner
1620 as in subsection (2). Further, the term means a person who
1621 acquires more than seven condominium parcels in a single
1622 condominium but who does not receive an assignment of any
1623 developer rights or receives only some or all of the following
1624 rights:

1625 (a) The right to conduct sales, leasing, and marketing
1626 activities within the condominium.

1627 (b) The right to be exempt from the payment of working
1628 capital contributions to the condominium association arising out
1629 of, or in connection with, the bulk buyer's acquisition of the
1630 units.

1631 (c) The right to be exempt from any rights of first
1632 refusal which may be held by the condominium association and
1633 would otherwise be applicable to subsequent transfers of title
1634 from the bulk buyer to a third-party purchaser concerning one or
1635 more units.

1636 (4) "Lender-unit purchaser" means a person, or the
1637 person's successors, assigns, or wholly owned subsidiaries, who
1638 holds a mortgage from a developer or from a bulk-unit purchaser

1639 on the greater of at least eight units or 20 percent of the
1640 units that, as provided in the declaration, articles of
1641 incorporation, or bylaws as originally recorded, ultimately will
1642 be operated by the same association; who subsequently obtains
1643 title to such units through foreclosure or deed in lieu of
1644 foreclosure; and who makes the election to become a lender-unit
1645 purchaser pursuant to 718.808(4). However, a mortgagee or his or
1646 her wholly owned subsidiary that acquires and sells units to one
1647 or more bulk-unit purchasers is not a developer or a lender-unit
1648 purchaser with respect to the sale.

1649 718.803 Exercise of rights.—

1650 (1) A bulk-unit purchaser may exercise only the following
1651 developer rights, provided such rights are contained in the
1652 declaration:

1653 (a) The right to conduct sales, leasing, and marketing
1654 activities within the condominium, including the use of the
1655 sales and leasing office.

1656 (b) The right to assign limited common elements and use
1657 rights to common elements and association property which were
1658 not assigned before the bulk-unit purchaser acquired title to
1659 the units. Such rights may include, without limitation, the
1660 rights to garages, parking spaces, storage areas, and cabanas.
1661 If there is more than one bulk-unit purchaser, this right must
1662 be established in a written assignment from the developer which
1663 specifies the bulk-unit purchaser who has such a right as to
1664 specified limited common elements, common elements, and

1665 association property.

1666 (c) For a phase condominium, the right to add phases.

1667 (2) If the initial purchaser of a unit from the developer
1668 is required to make a working capital contribution to the
1669 association, a bulk-unit purchaser shall pay a working capital
1670 contribution to the association, which must be calculated in the
1671 same manner for each unit acquired, upon the earlier of:

1672 (a) Sale of a unit by the bulk-unit purchaser to a third
1673 party other than the bulk-unit purchaser; or

1674 (b) Five years from the date of acquisition of title to a
1675 unit by the bulk-unit purchaser.

1676 (3) If a bulk-unit purchaser exercises developer rights
1677 other than those specified in subsection (1), he or she is no
1678 longer deemed to be a bulk-unit purchaser, and this part does
1679 not apply to such person.

1680 (4) Except as set forth in this part, a lender-unit
1681 purchaser may exercise any developer rights that the lender-unit
1682 purchaser acquires.

1683 718.804 Compliance.—A bulk-unit purchaser and a lender-
1684 unit purchaser shall comply with all applicable requirements of
1685 s. 718.202 and part V of this chapter in connection with any
1686 units that they own or sell.

1687 718.805 Voting rights.—

1688 (1) For the first 2 fiscal years following the first
1689 conveyance of a unit to a bulk-unit purchaser or lender-unit
1690 purchaser, the bulk-unit purchaser or lender-unit purchaser may

HB 791

2015

1691 vote the voting interests allocated to his or her units to waive
1692 reserves or reduce the funding of reserves. After these 2 fiscal
1693 years, the bulk-unit purchaser or lender-unit purchaser may not
1694 vote his or her voting interests to waive reserves or reduce the
1695 funding of reserves until the bulk-unit purchaser or lender-unit
1696 purchaser holds less than a majority of the voting interests in
1697 the association.

1698 (2) A bulk-unit purchaser or lender-unit purchaser may not
1699 transfer his or her right to vote to waive reserves or reduce
1700 the funding of reserves to other bulk-unit purchasers or lender-
1701 unit purchasers to extend the time period in subsection (1).

1702 718.806 Assessment liability; election of directors.-

1703 (1) BULK-UNIT PURCHASER ASSESSMENT LIABILITY.-A bulk-unit
1704 purchaser is liable for all assessments on his or her units
1705 which become due while the bulk-unit purchaser holds title to
1706 such units. Additionally, the bulk-unit purchaser is jointly and
1707 severally liable with the previous owner for all unpaid regular
1708 periodic assessments and special assessments which became due
1709 before the acquisition of title, for all other monetary
1710 obligations accrued which are secured by the association's lien,
1711 and for all costs advanced by the association for the
1712 maintenance and repair of the units acquired by the bulk-unit
1713 purchaser.

1714 (2) LENDER-UNIT PURCHASER ASSESSMENT LIABILITY.-The
1715 liability of a lender-unit purchaser or his or her successors or
1716 assignees for the units that the lender-unit purchaser owns is

1717 limited to the lesser of:

1718 (a) The units' unpaid common expenses and the regular
 1719 periodic assessments that accrued or became due during the 12
 1720 months immediately preceding the lender-unit purchaser's
 1721 acquisition of title and for which payment in full has not been
 1722 received by the association; or

1723 (b) One percent of the original mortgage debt.

1724
 1725 The lender-unit purchaser acquiring title must comply with s.
 1726 718.116(1)(c).

1727 (3) DIRECTOR ELECTED BY BULK-UNIT PURCHASER.—A director
 1728 who has been elected or appointed by a bulk-unit purchaser is
 1729 automatically suspended from board service for 30 days following
 1730 the failure of the bulk-unit purchaser to timely pay monetary
 1731 obligations on a unit the bulk-unit purchaser owns. The
 1732 remaining directors may temporarily fill the vacancy created by
 1733 the suspension. Once the bulk-unit purchaser has cured all
 1734 outstanding delinquencies on the unit, the suspended director
 1735 shall replace the temporary appointee and resume service on the
 1736 board for the unexpired term.

1737 718.807 Amendments and material alterations.—

1738 (1) The following amendments or alterations may not go
 1739 into effect unless approved by a majority vote of unit owners
 1740 other than the developer, a bulk-unit purchaser, or a lender-
 1741 unit purchaser:

1742 (a) An amendment described in s. 718.110(4) or (8).

1743 (b) An amendment creating, changing, or terminating
 1744 leasing restrictions.

1745 (c) An amendment of the declaration pertaining to the
 1746 condominium's status as housing for older persons.

1747 (d) An amendment pursuant to s. 718.110(14) or an
 1748 amendment that otherwise reclassifies a portion of the common
 1749 elements as a limited common element or that authorizes the
 1750 association to change the limited common elements assigned to
 1751 any unit.

1752 (e) Material alterations or substantial additions to the
 1753 common elements or association property any time one of the
 1754 following owns a percentage of voting interests equal to or
 1755 greater than the percentage required to approve the amendment:

1756 1. A bulk-unit purchaser;
 1757 2. A lender-unit purchaser;
 1758 3. The developer and a bulk-unit purchaser;
 1759 4. The developer and a lender-unit purchaser; or
 1760 5. A bulk-unit purchaser and a lender-unit purchaser.

1761 (2) Notwithstanding subsection (1), consent of the
 1762 developer, a bulk-unit purchaser, or a lender-unit purchaser is
 1763 required for an amendment that would otherwise require the
 1764 approval of such voting interests based upon the requirements of
 1765 the declaration, articles of incorporation, or bylaws or s.
 1766 718.110 or s. 718.113.

1767 718.808 Warranties and disclosures.—

1768 (1) As the seller, a bulk-unit purchaser or lender-unit

1769 purchaser is deemed to have granted an implied warranty of
1770 fitness and merchantability to a purchaser of each unit sold for
1771 a period of 3 years, which begins on the date of the completion
1772 of repairs or improvements that the bulk-unit purchaser or
1773 lender-unit purchaser makes to the unit, common elements, or
1774 limited common elements. The bulk-unit purchaser or lender-unit
1775 purchaser is not deemed to have granted a warranty on
1776 improvements, repairs, or alterations to the condominium which
1777 he or she did not undertake.

1778 (2) The statute of limitations in s. 718.203 is tolled
1779 while the bulk-unit purchaser begins the process of appointing
1780 or electing a majority of the board of administration.

1781 (3) As the seller, the bulk-unit purchaser shall include
1782 the following disclosure to purchasers in conspicuous type on
1783 the first page of the sales contract:

1784
1785 SELLER IS A BULK-UNIT PURCHASER UNDER THE CONDOMINIUM ACT.
1786 SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE
1787 UNDER THE CONDOMINIUM ACT.

1788
1789 (4) A mortgagee who acquires units may elect to become a
1790 lender-unit purchaser by providing written notice of the
1791 election to the association addressed to the registered agent at
1792 the address specified in the records of the Department of State.
1793 The notice shall be delivered within the time period ending upon
1794 the earliest of:

1795 (a) The date on which the mortgagee exercises any
 1796 developer rights other than the developer rights described in s.
 1797 718.803(1)(a);

1798 (b) Before the sale of a unit by the mortgagee; or

1799 (c) One hundred eighty days after the recording of the
 1800 certificate of title or of the deed in lieu of foreclosure if
 1801 the mortgagee acquired the units by foreclosure or by deed in
 1802 lieu of foreclosure.

1803 (5) As the seller, the lender-unit purchaser shall include
 1804 the following disclosure to purchasers in conspicuous type on
 1805 the first page of the sales contract:

1806
 1807 SELLER IS A LENDER-UNIT PURCHASER UNDER THE CONDOMINIUM ACT.
 1808 SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE
 1809 UNDER THE CONDOMINIUM ACT. SELLER TOOK TITLE TO THE UNIT(S)
 1810 BEING SOLD TO PURCHASER BY FORECLOSURE OR DEED IN LIEU OF
 1811 FORECLOSURE.

1812
 1813 (6)(a) At or before the signing of a contract to sell a
 1814 unit, the bulk-unit purchaser and the lender-unit purchaser must
 1815 provide a condition report that complies with s. 718.616(2) and
 1816 (3) and this section to the prospective purchaser and must
 1817 obtain verification of delivery of such condition report. A
 1818 condition report is not required in connection with a sale to a
 1819 bulk-unit purchaser or in connection with a deed in lieu of
 1820 foreclosure to a lender-unit purchaser. A mortgagee is not

1821 required to deliver to a bulk-unit purchaser a condition report
1822 even if the mortgagee acquires and transfers developer rights to
1823 such bulk-unit purchaser.

1824 (b) The condition report must include a reasonably
1825 detailed description of the repairs or replacements necessary to
1826 cure defective construction identified in the condition report.

1827 (c) If, during the course of preparing the condition
1828 report, the architect or engineer becomes aware of a component
1829 that violates an applicable building code or federal or state
1830 law or that deviates from the building plans approved by the
1831 permitting authority, the architect or engineer shall disclose
1832 such information in the condition report. The architect or
1833 engineer shall make written inquiry to the applicable local
1834 government authority of any building code violations and shall
1835 include in the condition report any of the authority's responses
1836 or its failure to respond.

1837 (d) The condition report shall be prepared before the
1838 bulk-unit purchaser or the lender-unit purchaser enters into his
1839 or her first sales contract, but the condition report may not be
1840 prepared more than 6 months before the first sales contract is
1841 agreed upon. If the bulk-unit purchaser or lender-unit purchaser
1842 remains engaged in selling units, the condition report shall be
1843 updated no later than 1 year after the closing of the first
1844 sales contract and each year thereafter.

1845 (e) If a bulk-unit purchaser or lender-unit purchaser
1846 fails to provide the condition report in accordance with this

1847 section, the bulk-unit purchaser is deemed to grant implied
1848 warranties of fitness and merchantability which are not limited
1849 to the construction, improvements, or repairs that he or she
1850 undertakes to the units, common elements, or limited common
1851 elements.

1852 718.809 Joint and several liability.—For purposes of this
1853 chapter, if there are multiple bulk-unit purchasers within the
1854 same association, the units owned by the multiple bulk-unit
1855 purchasers and the rights of the bulk-unit purchasers shall be
1856 aggregated as if there were only one bulk-unit purchaser. Each
1857 bulk-unit purchaser is jointly and severally liable with his or
1858 her predecessor bulk-unit purchasers for compliance with this
1859 chapter.

1860 718.810 Construction disputes.—A board of administration
1861 composed of a majority of directors elected or appointed by a
1862 bulk-unit purchaser may not resolve a construction dispute that
1863 is subject to chapter 558 unless such resolution is approved by
1864 a majority of the voting interests of the unit owners other than
1865 the developer and a bulk-unit purchaser.

1866 718.811 Noncompliance.—A bulk-unit purchaser or a lender-
1867 unit purchaser who fails to substantially comply with the
1868 requirements of this chapter pertaining to the obligations and
1869 rights of bulk-unit purchasers and lender-unit purchasers
1870 forfeits all protections or exemptions provided under the
1871 Condominium Act.

1872 718.812 Documents to be delivered upon turnover.—If a

1873 bulk-unit purchaser elects a majority of the board of
1874 administration and the unit owners other than the bulk-unit
1875 purchaser elect a majority, the bulk-unit purchaser must deliver
1876 all of the items specified in s. 718.301(4) to the association.
1877 However, the bulk-unit purchaser is not required to deliver
1878 items that were never in the possession of the bulk-unit
1879 purchaser. In conjunction with the acquisition of units, the
1880 bulk-unit purchaser shall undertake a good faith effort to
1881 obtain the items specified in s. 718.301(4) which must be
1882 delivered to the association. If the bulk-unit purchaser cannot
1883 obtain such items, the bulk-unit purchaser must deliver a
1884 certificate in writing to the association which names or
1885 describes items that were not obtainable by the bulk-unit
1886 purchaser and which describes the good faith efforts that were
1887 undertaken to obtain the items. Delivery of the certificate
1888 relieves the bulk-unit purchaser of his or her responsibility
1889 under s. 718.301 to deliver the documents and materials
1890 referenced in the certificate. The responsibility of the bulk-
1891 unit purchaser to conduct the audit required by s. 718.301(4)(c)
1892 begins on the date the bulk-unit purchaser elects or appoints a
1893 majority of the members of the board of administration and ends
1894 on the date the bulk-unit purchaser no longer controls the
1895 board.

1896 Section 14. Paragraph (a) of subsection (2) of section
1897 719.104, Florida Statutes, is amended to read:

1898 719.104 Cooperatives; access to units; records; financial

1899 reports; assessments; purchase of leases.—

1900 (2) OFFICIAL RECORDS.—

1901 (a) From the inception of the association, the association
 1902 shall maintain a copy of each of the following, where
 1903 applicable, which shall constitute the official records of the
 1904 association:

1905 1. The plans, permits, warranties, and other items
 1906 provided by the developer pursuant to s. 719.301(4).

1907 2. A photocopy of the cooperative documents.

1908 3. A copy of the current rules of the association.

1909 4. A book or books containing the minutes of all meetings
 1910 of the association, of the board of directors, and of the unit
 1911 owners, which minutes shall be retained for a period of not less
 1912 than 7 years.

1913 5. A current roster of all unit owners and their mailing
 1914 addresses, unit identifications, voting certifications, and, if
 1915 known, telephone numbers. The association shall also maintain
 1916 the electronic mailing addresses and the numbers designated by
 1917 unit owners for receiving notice sent by electronic transmission
 1918 of those unit owners consenting to receive notice by electronic
 1919 transmission. The electronic mailing addresses and numbers
 1920 provided by unit owners to receive notice by electronic
 1921 transmission shall be removed from association records when
 1922 consent to receive notice by electronic transmission is revoked.
 1923 However, the association is not liable for an erroneous
 1924 disclosure of the electronic mail address or the number for

1925 receiving electronic transmission of notices.

1926 6. All current insurance policies of the association.

1927 7. A current copy of any management agreement, lease, or

1928 other contract to which the association is a party or under

1929 which the association or the unit owners have an obligation or

1930 responsibility.

1931 8. Bills of sale or transfer for all property owned by the

1932 association.

1933 9. Accounting records for the association and separate

1934 accounting records for each unit it operates, according to good

1935 accounting practices. All accounting records shall be maintained

1936 for a period of not less than 7 years. The accounting records

1937 shall include, but not be limited to:

1938 a. Accurate, itemized, and detailed records of all

1939 receipts and expenditures.

1940 b. A current account and a monthly, bimonthly, or

1941 quarterly statement of the account for each unit designating the

1942 name of the unit owner, the due date and amount of each

1943 assessment, the amount paid upon the account, and the balance

1944 due.

1945 c. All audits, reviews, accounting statements, and

1946 financial reports of the association.

1947 d. All contracts for work to be performed. Bids for work

1948 to be performed shall also be considered official records and

1949 shall be maintained for a period of 1 year.

1950 10. Ballots, sign-in sheets, voting proxies, and all other

1951 papers relating to voting by unit owners, which shall be
 1952 maintained for a period of 1 year after the date of the
 1953 election, vote, or meeting to which the document relates.

1954 11. All rental records where the association is acting as
 1955 agent for the rental of units.

1956 12. A copy of the current question and answer sheet as
 1957 described in s. 719.504.

1958 13. All other written records of the association not
 1959 specifically included in the foregoing which are related to the
 1960 operation of the association.

1961 Section 15. Paragraphs (c) and (d) of subsection (1) of
 1962 section 719.106, Florida Statutes, are amended to read:

1963 719.106 Bylaws; cooperative ownership.—

1964 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
 1965 documents shall provide for the following, and if they do not,
 1966 they shall be deemed to include the following:

1967 (c) Board of administration meetings.—Meetings of the
 1968 board of administration at which a quorum of the members is
 1969 present shall be open to all unit owners. Any unit owner may
 1970 tape record or videotape meetings of the board of
 1971 administration; however, a unit owner may not post the
 1972 recordings on any website or other media that can readily be
 1973 viewed by persons who are not members of the association. The
 1974 right to attend such meetings includes the right to speak at
 1975 such meetings with reference to all designated agenda items. The
 1976 division shall adopt reasonable rules governing the tape

1977 recording and videotaping of the meeting. The association may
1978 adopt reasonable written rules governing the frequency,
1979 duration, and manner of unit owner statements. Adequate notice
1980 of all meetings shall be posted in a conspicuous place upon the
1981 cooperative property at least 48 continuous hours preceding the
1982 meeting, except in an emergency. Any item not included on the
1983 notice may be taken up on an emergency basis by at least a
1984 majority plus one of the members of the board. Such emergency
1985 action shall be noticed and ratified at the next regular meeting
1986 of the board. However, written notice of any meeting at which
1987 nonemergency special assessments, or at which amendment to rules
1988 regarding unit use, will be considered shall be mailed,
1989 delivered, or electronically transmitted to the unit owners and
1990 posted conspicuously on the cooperative property not less than
1991 14 days before the meeting. Evidence of compliance with this 14-
1992 day notice shall be made by an affidavit executed by the person
1993 providing the notice and filed among the official records of the
1994 association. Upon notice to the unit owners, the board shall by
1995 duly adopted rule designate a specific location on the
1996 cooperative property upon which all notices of board meetings
1997 shall be posted. In lieu of or in addition to the physical
1998 posting of notice of any meeting of the board of administration
1999 on the cooperative property, the association may, by reasonable
2000 rule, adopt a procedure for conspicuously posting and repeatedly
2001 broadcasting the notice and the agenda on a closed-circuit cable
2002 television system serving the cooperative association. However,

HB 791

2015

2003 | if broadcast notice is used in lieu of a notice posted
2004 | physically on the cooperative property, the notice and agenda
2005 | must be broadcast at least four times every broadcast hour of
2006 | each day that a posted notice is otherwise required under this
2007 | section. When broadcast notice is provided, the notice and
2008 | agenda must be broadcast in a manner and for a sufficient
2009 | continuous length of time so as to allow an average reader to
2010 | observe the notice and read and comprehend the entire content of
2011 | the notice and the agenda. Notice of any meeting in which
2012 | regular assessments against unit owners are to be considered for
2013 | any reason shall specifically contain a statement that
2014 | assessments will be considered and the nature of any such
2015 | assessments. Meetings of a committee to take final action on
2016 | behalf of the board or to make recommendations to the board
2017 | regarding the association budget are subject to the provisions
2018 | of this paragraph. Meetings of a committee that does not take
2019 | final action on behalf of the board or make recommendations to
2020 | the board regarding the association budget are subject to the
2021 | provisions of this section, unless those meetings are exempted
2022 | from this section by the bylaws of the association.
2023 | Notwithstanding any other law to the contrary, the requirement
2024 | that board meetings and committee meetings be open to the unit
2025 | owners does not apply to board or committee meetings held for
2026 | the purpose of discussing personnel matters or meetings between
2027 | the board or a committee and the association's attorney, with
2028 | respect to proposed or pending litigation, if the meeting is

2029 held for the purpose of seeking or rendering legal advice.

2030 (d) Shareholder meetings.—There shall be an annual meeting
2031 of the shareholders. All members of the board of administration
2032 shall be elected at the annual meeting unless the bylaws provide
2033 for staggered election terms or for their election at another
2034 meeting. Any unit owner desiring to be a candidate for board
2035 membership must comply with subparagraph 1. The bylaws must
2036 provide the method for calling meetings, including annual
2037 meetings. Written notice, which must incorporate an
2038 identification of agenda items, shall be given to each unit
2039 owner at least 14 days before the annual meeting and posted in a
2040 conspicuous place on the cooperative property at least 14
2041 continuous days preceding the annual meeting. Upon notice to the
2042 unit owners, the board must by duly adopted rule designate a
2043 specific location on the cooperative property upon which all
2044 notice of unit owner meetings are posted. In lieu of or in
2045 addition to the physical posting of the meeting notice, the
2046 association may, by reasonable rule, adopt a procedure for
2047 conspicuously posting and repeatedly broadcasting the notice and
2048 the agenda on a closed-circuit cable television system serving
2049 the cooperative association. However, if broadcast notice is
2050 used in lieu of a posted notice, the notice and agenda must be
2051 broadcast at least four times every broadcast hour of each day
2052 that a posted notice is otherwise required under this section.
2053 If broadcast notice is provided, the notice and agenda must be
2054 broadcast in a manner and for a sufficient continuous length of

2055 time to allow an average reader to observe the notice and read
2056 and comprehend the entire content of the notice and the agenda.
2057 Unless a unit owner waives in writing the right to receive
2058 notice of the annual meeting, the notice of the annual meeting
2059 must be sent by mail, hand delivered, or electronically
2060 transmitted to each unit owner. An officer of the association
2061 must provide an affidavit or United States Postal Service
2062 certificate of mailing, to be included in the official records
2063 of the association, affirming that notices of the association
2064 meeting were mailed, hand delivered, or electronically
2065 transmitted, in accordance with this provision, to each unit
2066 owner at the address last furnished to the association.

2067 1. The board of administration shall be elected by written
2068 ballot or voting machine. A proxy may not be used in electing
2069 the board of administration in general elections or elections to
2070 fill vacancies caused by recall, resignation, or otherwise
2071 unless otherwise provided in this chapter.

2072 a. At least 60 days before a scheduled election, the
2073 association shall mail, deliver, or transmit, whether by
2074 separate association mailing, delivery, or electronic
2075 transmission or included in another association mailing,
2076 delivery, or electronic transmission, including regularly
2077 published newsletters, to each unit owner entitled to vote, a
2078 first notice of the date of the election. Any unit owner or
2079 other eligible person desiring to be a candidate for the board
2080 of administration must give written notice to the association at

2081 | least 40 days before a scheduled election. Together with the
2082 | written notice and agenda as set forth in this section, the
2083 | association shall mail, deliver, or electronically transmit a
2084 | second notice of election to all unit owners entitled to vote,
2085 | together with a ballot that lists all candidates. Upon request
2086 | of a candidate, the association shall include an information
2087 | sheet, no larger than 8 1/2 inches by 11 inches, which must be
2088 | furnished by the candidate at least 35 days before the election,
2089 | to be included with the mailing, delivery, or electronic
2090 | transmission of the ballot, with the costs of mailing, delivery,
2091 | or transmission and copying to be borne by the association. The
2092 | association is not liable for the contents of the information
2093 | sheets provided by the candidates. In order to reduce costs, the
2094 | association may print or duplicate the information sheets on
2095 | both sides of the paper. The division shall by rule establish
2096 | voting procedures consistent with this subparagraph, including
2097 | rules establishing procedures for giving notice by electronic
2098 | transmission and rules providing for the secrecy of ballots.
2099 | Elections shall be decided by a plurality of those ballots cast.
2100 | There is no quorum requirement. However, at least 20 percent of
2101 | the eligible voters must cast a ballot in order to have a valid
2102 | election. A unit owner may not permit any other person to vote
2103 | his or her ballot, and any such ballots improperly cast are
2104 | invalid. A unit owner who needs assistance in casting the ballot
2105 | for the reasons stated in s. 101.051 may obtain assistance in
2106 | casting the ballot. Any unit owner violating this provision may

2107 | be fined by the association in accordance with s. 719.303. The
2108 | regular election must occur on the date of the annual meeting.
2109 | This subparagraph does not apply to timeshare cooperatives.
2110 | Notwithstanding this subparagraph, an election and balloting are
2111 | not required unless more candidates file a notice of intent to
2112 | run or are nominated than vacancies exist on the board. Any
2113 | challenge to the election process must be commenced within 60
2114 | days after the election results are announced.

2115 | b. Within 90 days after being elected or appointed to the
2116 | board, each new director shall certify in writing to the
2117 | secretary of the association that he or she has read the
2118 | association's bylaws, articles of incorporation, proprietary
2119 | lease, and current written policies; that he or she will work to
2120 | uphold such documents and policies to the best of his or her
2121 | ability; and that he or she will faithfully discharge his or her
2122 | fiduciary responsibility to the association's members. Within 90
2123 | days after being elected or appointed to the board, in lieu of
2124 | this written certification, the newly elected or appointed
2125 | director may submit a certificate of having satisfactorily
2126 | completed the educational curriculum administered by an
2127 | education provider as approved by the division pursuant to the
2128 | requirements established in chapter 718 within 1 year before or
2129 | 90 days after the date of election or appointment. The
2130 | educational certificate is valid and does not have to be
2131 | resubmitted as long as the director serves on the board without
2132 | interruption. A director who fails to timely file the written

2133 certification or educational certificate is suspended from
2134 service on the board until he or she complies with this sub-
2135 subparagraph. The board may temporarily fill the vacancy during
2136 the period of suspension. The secretary of the association shall
2137 cause the association to retain a director's written
2138 certification or educational certificate for inspection by the
2139 members for 5 years after a director's election or the duration
2140 of the director's uninterrupted tenure, whichever is longer.
2141 Failure to have such written certification or educational
2142 certificate on file does not affect the validity of any board
2143 action.

2144 2. Any approval by unit owners called for by this chapter,
2145 or the applicable cooperative documents, must be made at a duly
2146 noticed meeting of unit owners and is subject to this chapter or
2147 the applicable cooperative documents relating to unit owner
2148 decisionmaking, except that unit owners may take action by
2149 written agreement, without meetings, on matters for which action
2150 by written agreement without meetings is expressly allowed by
2151 the applicable cooperative documents or law which provides for
2152 the unit owner action.

2153 3. Unit owners may waive notice of specific meetings if
2154 allowed by the applicable cooperative documents or law. If
2155 authorized by the bylaws, notice of meetings of the board of
2156 administration, shareholder meetings, except shareholder
2157 meetings called to recall board members under paragraph (f), and
2158 committee meetings may be given by electronic transmission to

HB 791

2015

2159 unit owners who consent to receive notice by electronic
2160 transmission.

2161 4. Unit owners have the right to participate in meetings
2162 of unit owners with reference to all designated agenda items.
2163 However, the association may adopt reasonable rules governing
2164 the frequency, duration, and manner of unit owner participation.

2165 5. Any unit owner may tape record or videotape meetings of
2166 the unit owners subject to reasonable rules adopted by the
2167 division; however, a unit owner may not post the recordings on
2168 any website or other media that can readily be viewed by persons
2169 who are not members of the association.

2170 6. Unless otherwise provided in the bylaws, a vacancy
2171 occurring on the board before the expiration of a term may be
2172 filled by the affirmative vote of the majority of the remaining
2173 directors, even if the remaining directors constitute less than
2174 a quorum, or by the sole remaining director. In the alternative,
2175 a board may hold an election to fill the vacancy, in which case
2176 the election procedures must conform to the requirements of
2177 subparagraph 1. unless the association has opted out of the
2178 statutory election process, in which case the bylaws of the
2179 association control. Unless otherwise provided in the bylaws, a
2180 board member appointed or elected under this subparagraph shall
2181 fill the vacancy for the unexpired term of the seat being
2182 filled. Filling vacancies created by recall is governed by
2183 paragraph (f) and rules adopted by the division.

2184

HB 791

2015

2185 Notwithstanding subparagraphs (b)2. and (d)1., an association
2186 may, by the affirmative vote of a majority of the total voting
2187 interests, provide for a different voting and election procedure
2188 in its bylaws, which vote may be by a proxy specifically
2189 delineating the different voting and election procedures. The
2190 different voting and election procedures may provide for
2191 elections to be conducted by limited or general proxy.

2192 Section 16. Subsections (3) and (4) of section 719.108,
2193 Florida Statutes, are amended to read:

2194 719.108 Rents and assessments; liability; lien and
2195 priority; interest; collection; cooperative ownership.—

2196 (3) Rents and assessments, and installments on them, not
2197 paid when due bear interest at the rate provided in the
2198 cooperative documents from the date due until paid. This rate
2199 may not exceed the rate allowed by law and, if a rate is not
2200 provided in the cooperative documents, accrues at 18 percent per
2201 annum. If the cooperative documents or bylaws so provide, the
2202 association may charge an administrative late fee in addition to
2203 such interest, not to exceed the greater of \$25 or 5 percent of
2204 each installment of the assessment for each delinquent
2205 installment that the payment is late. Any payment received by an
2206 association must be applied first to any interest accrued by the
2207 association, then to any administrative late fee, then to any
2208 costs and reasonable attorney fees incurred in collection, and
2209 then to the delinquent assessment. The foregoing applies
2210 notwithstanding s. 673.3111, any purported accord and

2211 satisfaction, or any restrictive endorsement, designation, or
 2212 instruction placed on or accompanying a payment. The preceding
 2213 sentence of is intended to clarify existing law. A late fee is
 2214 not subject to chapter 687 or s. 719.303(4).

2215 (4) The association has a lien on each cooperative parcel
 2216 for any unpaid rents and assessments, plus interest, and any
 2217 ~~authorized~~ administrative late fees. If authorized by the
 2218 cooperative documents, the lien also secures reasonable attorney
 2219 fees incurred by the association incident to the collection of
 2220 the rents and assessments or enforcement of such lien. The lien
 2221 is effective from and after recording a claim of lien in the
 2222 public records in the county in which the cooperative parcel is
 2223 located which states the description of the cooperative parcel,
 2224 the name of the unit owner, the amount due, and the due dates.
 2225 Except as otherwise provided in this chapter, a lien may not be
 2226 filed by the association against a cooperative parcel until 30
 2227 days after the date on which a notice of intent to file a lien
 2228 has been delivered to the owner.

2229 (a) The notice must be sent to the unit owner at the
 2230 address of the unit by first-class United States mail, and the
 2231 notice must be in substantially the following form:

2232 NOTICE OF INTENT
 2233 TO RECORD A CLAIM OF LIEN
 2234 RE: Unit ...(unit number)... of ...(name of cooperative)..
 2235 The following amounts are currently due on your account to
 2236 ...(name of association)..., and must be paid within 30 days

HB 791

2015

2237 after your receipt of this letter. This letter shall serve as
 2238 the association's notice of intent to record a Claim of Lien
 2239 against your property no sooner than 30 days after your receipt
 2240 of this letter, unless you pay in full the amounts set forth
 2241 below:

2242	Maintenance due ...(dates)...	\$.....
2243	Late fee, if applicable	\$.....
2244	Interest through ...(dates)...*	\$.....
2245	Certified mail charges	\$.....
2246	Other costs	\$.....
2247	TOTAL OUTSTANDING	\$.....

2248 *Interest accrues at the rate of percent per annum.

2249 1. If the most recent address of the unit owner on the
 2250 records of the association is the address of the unit, the
 2251 notice must be sent by certified mail, return receipt requested,
 2252 to the unit owner at the address of the unit.

2253 2. If the most recent address of the unit owner on the
 2254 records of the association is in the United States, but is not
 2255 the address of the unit, the notice must be sent by certified
 2256 mail, return receipt requested, to the unit owner at his or her
 2257 most recent address.

2258 3. If the most recent address of the unit owner on the
 2259 records of the association is not in the United States, the
 2260 notice must be sent by first-class United States mail to the
 2261 unit owner at his or her most recent address.

2262 (b) A notice that is sent pursuant to this subsection is

2263 deemed delivered upon mailing. A claim of lien must be executed
 2264 and acknowledged by an officer or authorized agent of the
 2265 association. The lien is not effective 1 year after the claim of
 2266 lien was recorded unless, within that time, an action to enforce
 2267 the lien is commenced. The 1-year period is automatically
 2268 extended for any length of time during which the association is
 2269 prevented from filing a foreclosure action by an automatic stay
 2270 resulting from a bankruptcy petition filed by the parcel owner
 2271 or any other person claiming an interest in the parcel. The
 2272 claim of lien secures all unpaid rents and assessments that are
 2273 due and that may accrue after the claim of lien is recorded and
 2274 through the entry of a final judgment, as well as interest and
 2275 all reasonable costs and attorney fees incurred by the
 2276 association incident to the collection process. Upon payment in
 2277 full, the person making the payment is entitled to a
 2278 satisfaction of the lien.

2279 (c) By recording a notice in substantially the following
 2280 form, a unit owner or the unit owner's agent or attorney may
 2281 require the association to enforce a recorded claim of lien
 2282 against his or her cooperative parcel:

2283 NOTICE OF CONTEST OF LIEN

2284 TO: ...(Name and address of association)...:
 2285 You are notified that the undersigned contests the claim of lien
 2286 filed by you on, ...(year)..., and recorded in Official
 2287 Records Book at Page, of the public records of
 2288 County, Florida, and that the time within which you may file

2289 | suit to enforce your lien is limited to 90 days from the date of
 2290 | service of this notice. Executed this day of,
 2291 | ...(year)....

2292 | Signed: ...(Owner or Attorney)...

2293 | After notice of contest of lien has been recorded, the clerk of
 2294 | the circuit court shall mail a copy of the recorded notice to
 2295 | the association by certified mail, return receipt requested, at
 2296 | the address shown in the claim of lien or most recent amendment
 2297 | to it and shall certify to the service on the face of the
 2298 | notice. Service is complete upon mailing. After service, the
 2299 | association has 90 days in which to file an action to enforce
 2300 | the lien. If the action is not filed within the 90-day period,
 2301 | the lien is void. However, the 90-day period shall be extended
 2302 | for any length of time during which the association is prevented
 2303 | from filing its action because of an automatic stay resulting
 2304 | from the filing of a bankruptcy petition by the unit owner or by
 2305 | any other person claiming an interest in the parcel.

2306 | (d) A release of lien must be in substantially the
 2307 | following form:

2308 | RELEASE OF LIEN

2309 | The undersigned lienor, in consideration of the final payment in
 2310 | the amount of \$....., hereby waives and releases its lien and
 2311 | right to claim a lien for unpaid assessments through,
 2312 | ...(year)...., recorded in the Official Records Book at Page
 2313 |, of the public records of County, Florida, for the
 2314 | following described real property:

2315 THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO. OF ... (NAME
 2316 OF COOPERATIVE) ..., A COOPERATIVE AS SET FORTH IN THE
 2317 COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND
 2318 FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK,
 2319 PAGE, OF THE PUBLIC RECORDS OF COUNTY, FLORIDA.
 2320 ... (Signature of Authorized Agent) (Signature of Witness) ...
 2321 ... (Print Name) (Print Name) ...
 2322 .. (Signature of Witness) ...
 2323 .. (Print Name) ...
 2324 Sworn to (or affirmed) and subscribed before me this day of
 2325, ... (year) ..., by ... (name of person making statement)
 2326 ... (Signature of Notary Public) ...
 2327 ... (Print, type, or stamp commissioned name of Notary Public) ...
 2328 Personally Known OR Produced as identification.
 2329 Section 17. Subsection (3) of section 719.303, Florida
 2330 Statutes, is amended to read:
 2331 719.303 Obligations of owners.—
 2332 (3) The association may levy reasonable fines for failure
 2333 of the unit owner or the unit's occupant, licensee, or invitee
 2334 to comply with any provision of the cooperative documents or
 2335 reasonable rules of the association. A fine may not become a
 2336 lien against a unit. A fine may be levied by the board or its
 2337 authorized designee on the basis of each day of a continuing
 2338 violation, with a single notice and opportunity for hearing
 2339 before an impartial committee as provided in paragraph (b).
 2340 However, the fine may not exceed \$100 per violation, or \$1,000

HB 791

2015

2341 in the aggregate.

2342 (a) An association may suspend, for a reasonable period of
2343 time, the right of a unit owner, or a unit owner's tenant,
2344 guest, or invitee, to use the common elements, common
2345 facilities, or any other association property for failure to
2346 comply with any provision of the cooperative documents or
2347 reasonable rules of the association. This paragraph does not
2348 apply to limited common elements intended to be used only by
2349 that unit, common elements needed to access the unit, utility
2350 services provided to the unit, parking spaces, or elevators.

2351 (b) A fine or suspension levied by the board of
2352 administration or its authorized designee may not be imposed
2353 unless the board first provides at least 14 days' written ~~except~~
2354 ~~after giving reasonable~~ notice and an opportunity for a hearing
2355 to the unit owner and, if applicable, its occupant, ~~the unit's~~
2356 licensee, or invitee. The hearing must be held before an
2357 impartial ~~a~~ committee of other unit owners who are neither board
2358 members, persons residing in a board member's household, nor the
2359 authorized designee or members of the authorized designee's
2360 household. The role of the impartial committee is limited to
2361 determining whether to confirm or reject the fine or suspension
2362 levied by the board or its authorized designee. If the impartial
2363 committee does not agree with the fine or suspension, it may not
2364 be imposed.

2365 Section 18. Subsection (8) of section 720.301, Florida
2366 Statutes, is amended to read:

2367 720.301 Definitions.—As used in this chapter, the term:

2368 (8) "Governing documents" means:

2369 (a) The recorded declaration of covenants for a community~~7~~
 2370 and all duly adopted and recorded amendments, supplements, and
 2371 recorded exhibits thereto; ~~and~~

2372 (b) The articles of incorporation and bylaws of the
 2373 homeowners' association~~7~~ and any duly adopted amendments
 2374 thereto; and

2375 (c) Rules and regulations adopted under the authority of
 2376 the recorded declaration, articles of incorporation, or bylaws
 2377 and duly adopted amendments thereto.

2378 Section 19. Section 720.3015, Florida Statutes, is created
 2379 to read:

2380 720.3015 Short title.—This chapter may be cited as the
 2381 "Homeowners' Association Act."

2382 Section 20. Section 720.305, Florida Statutes, is amended
 2383 to read:

2384 720.305 Obligations of members; remedies at law or in
 2385 equity; levy of fines and suspension of use rights.—

2386 (1) Each member and the member's tenants, guests, and
 2387 invitees, and each association, are governed by, and must comply
 2388 with, this chapter, the governing documents of the community,
 2389 and the rules of the association. Actions at law or in equity,
 2390 or both, to redress alleged failure or refusal to comply with
 2391 these provisions may be brought by the association or by any
 2392 member against:

2393 (a) The association;

2394 (b) A member;

2395 (c) Any director or officer of an association who

2396 willfully and knowingly fails to comply with these provisions;

2397 and

2398 (d) Any tenants, guests, or invitees occupying a parcel or

2399 using the common areas.

2400

2401 The prevailing party in any such litigation is entitled to

2402 recover reasonable attorney ~~attorney's~~ fees and costs. A member

2403 prevailing in an action between the association and the member

2404 under this section, in addition to recovering his or her

2405 reasonable attorney ~~attorney's~~ fees, may recover additional

2406 amounts as determined by the court to be necessary to reimburse

2407 the member for his or her share of assessments levied by the

2408 association to fund its expenses of the litigation. This relief

2409 does not exclude other remedies provided by law. This section

2410 does not deprive any person of any other available right or

2411 remedy.

2412 (2) The association may levy reasonable fines. A fine may

2413 not exceed ~~of up to~~ \$100 per violation against any member or any

2414 member's tenant, guest, or invitee for the failure of the owner

2415 of the parcel or its occupant, licensee, or invitee to comply

2416 with any provision of the declaration, the association bylaws,

2417 or reasonable rules of the association unless otherwise provided

2418 in the governing documents. A fine may be levied by the board or

HB 791

2015

2419 its authorized designee for each day of a continuing violation,
2420 with a single notice and opportunity for hearing, except that
2421 the fine may not exceed \$1,000 in the aggregate unless otherwise
2422 provided in the governing documents. A fine of less than \$1,000
2423 may not become a lien against a parcel. In any action to recover
2424 a fine, the prevailing party is entitled to reasonable attorney
2425 fees and costs from the nonprevailing party as determined by the
2426 court.

2427 (a) An association may suspend, for a reasonable period of
2428 time, the right of a member, or a member's tenant, guest, or
2429 invitee, to use common areas and facilities for the failure of
2430 the owner of the parcel or its occupant, licensee, or invitee to
2431 comply with any provision of the declaration, the association
2432 bylaws, or reasonable rules of the association. This paragraph
2433 does not apply to that portion of common areas used to provide
2434 access or utility services to the parcel. A suspension may not
2435 prohibit ~~impair the right of~~ an owner or tenant of a parcel from
2436 having to have vehicular and pedestrian ingress to and egress
2437 from the parcel, including, but not limited to, the right to
2438 park.

2439 (b) A fine or suspension may not be imposed by the board
2440 of administration or its authorized designee without at least 14
2441 days' notice to the person sought to be fined or suspended and
2442 an opportunity for a hearing before an impartial ~~a~~ committee of
2443 at least three members appointed by the board who are not
2444 officers, directors, or employees of the association, or the

HB 791

2015

2445 spouse, parent, child, brother, or sister of an officer,
2446 director, ~~or~~ employee, or the board's designee or the designee's
2447 family. If the committee, by majority vote, does not approve a
2448 proposed fine or suspension, it may not be imposed. The role of
2449 the impartial committee is limited to determining whether to
2450 confirm or reject the fine or suspension levied by the board or
2451 its authorized designee. If the board of administration or its
2452 authorized designee ~~association~~ imposes a fine or suspension,
2453 the association must provide written notice of such fine or
2454 suspension by mail or hand delivery to the parcel owner and, if
2455 applicable, to any tenant, licensee, or invitee of the parcel
2456 owner.

2457 (3) If a member is more than 90 days delinquent in paying
2458 any fee, fine, or other ~~a~~ monetary obligation due to the
2459 association, the association may suspend the rights of the
2460 member, or the member's tenant, guest, or invitee, to use common
2461 areas and facilities until the fee, fine, or other monetary
2462 obligation is paid in full. This subsection does not apply to
2463 that portion of common areas used to provide access or utility
2464 services to the parcel. A suspension may ~~does~~ not prohibit
2465 ~~impair the right of~~ an owner or tenant of a parcel from having
2466 ~~to have~~ vehicular and pedestrian ingress to and egress from the
2467 parcel, including, but not limited to, the right to park. The
2468 notice and hearing requirements under subsection (2) do not
2469 apply to a suspension imposed under this subsection.

2470 (4) An association may suspend the voting rights of a

HB 791

2015

2471 parcel or member for the nonpayment of any fee, fine, or other
2472 monetary obligation due to the association that is more than 90
2473 days delinquent. A voting interest or consent right allocated to
2474 a parcel or member which has been suspended by the association
2475 shall be subtracted from ~~may not be counted towards~~ the total
2476 number of voting interests in the association, which shall be
2477 reduced by the number of suspended voting interests when
2478 calculating the total percentage or number of all voting
2479 interests available to take or approve any action, and the
2480 suspended voting interests shall not be considered for any
2481 purpose, including, but not limited to, the percentage or number
2482 of voting interests necessary to constitute a quorum, the
2483 percentage or number of voting interests required to conduct an
2484 election, or the percentage or number of voting interests
2485 required to approve an action under this chapter or pursuant to
2486 the governing documents. The notice and hearing requirements
2487 under subsection (2) do not apply to a suspension imposed under
2488 this subsection. The suspension ends upon full payment of all
2489 obligations currently due or overdue to the association.

2490 (5) All suspensions imposed pursuant to subsection (3) or
2491 subsection (4) must be approved at a properly noticed board
2492 meeting. Upon approval, the association must notify the parcel
2493 owner and, if applicable, the parcel's occupant, licensee, or
2494 invitee by mail or hand delivery.

2495 (6) The suspensions permitted by paragraph (2) (a) and
2496 subsections (3) and (4) apply to a member and, when appropriate,

2497 the member's tenants, guests, or invitees, even if the
 2498 delinquency or failure that resulted in the suspension arose
 2499 from less than all of the multiple parcels owned by a member.

2500 Section 21. Paragraph (b) of subsection (1) and
 2501 subsections (9) and (10) of section 720.306, Florida Statutes,
 2502 are amended to read:

2503 720.306 Meetings of members; voting and election
 2504 procedures; amendments.—

2505 (1) QUORUM; AMENDMENTS.—

2506 (b) Unless otherwise provided in the governing documents
 2507 or required by law, and other than those matters set forth in
 2508 paragraph (c), any governing document of an association may be
 2509 amended by the affirmative vote of two-thirds of the voting
 2510 interests of the association. Within 30 days after recording an
 2511 amendment to the governing documents, the association shall
 2512 provide copies of the amendment to the members. However, if a
 2513 copy of the proposed amendment is provided to the members before
 2514 they vote on the amendment ~~and the proposed amendment is not~~
 2515 ~~changed before the vote~~, the association, in lieu of providing a
 2516 copy of the amendment, may provide notice to the members that
 2517 the amendment was adopted, identifying the official book and
 2518 page number or instrument number of the recorded amendment and
 2519 that a copy of the amendment is available at no charge to the
 2520 member upon written request to the association. The copies and
 2521 notice described in this paragraph may be provided
 2522 electronically to those owners who previously consented to

2523 receive notice electronically. The failure to timely provide
2524 notice of the recording of the amendment does not affect the
2525 validity or enforceability of the amendment.

2526 (9) ELECTIONS AND BOARD VACANCIES.—

2527 (a) Elections of directors must be conducted in accordance
2528 with the procedures set forth in the governing documents of the
2529 association. Except as provided in paragraph (b), all members of
2530 the association are eligible to serve on the board of directors,
2531 and a member may nominate himself or herself as a candidate for
2532 the board at a meeting where the election is to be held;
2533 provided, however, that if the election process allows
2534 candidates to be nominated in advance of the meeting, the
2535 association is not required to allow nominations at the meeting.
2536 An election is not required unless more candidates are nominated
2537 than vacancies exist. Except as otherwise provided in the
2538 governing documents, boards of directors must be elected by a
2539 plurality of the votes cast by eligible voters. Any challenge to
2540 the election process must be commenced within 60 days after the
2541 election results are announced.

2542 (b) A person who is delinquent in the payment of any fee,
2543 fine, or other monetary obligation to the association on the day
2544 that he or she could last nominate himself or herself or be
2545 nominated for the board may not seek election to the board, and
2546 his or her name shall not be listed on the ballot. A person
2547 -serving as a board member who becomes more than 90 days
2548 delinquent in the payment of any fee, fine, or other monetary

2549 obligation to the association shall be deemed to have abandoned
2550 his or her seat on the board, creating a vacancy on the board to
2551 be filled according to law. For purposes of this paragraph, the
2552 term "any fee, fine, or other monetary obligation" means any
2553 delinquency to the association with respect to any parcel ~~for~~
2554 ~~more than 90 days is not eligible for board membership.~~ A person
2555 who has been convicted of any felony in this state or in a
2556 United States District or Territorial Court, or has been
2557 convicted of any offense in another jurisdiction which would be
2558 considered a felony if committed in this state, may not seek
2559 election to the board and is not eligible for board membership
2560 unless such felon's civil rights have been restored for at least
2561 5 years as of the date on which such person seeks election to
2562 the board. The validity of any action by the board is not
2563 affected if it is later determined that a person was ineligible
2564 to seek election to the board or that a member of the board is
2565 ineligible for board membership.

2566 (c) Any election dispute between a member and an
2567 association must be submitted to mandatory binding arbitration
2568 with the division. Such proceedings must be conducted in the
2569 manner provided by s. 718.1255 and the procedural rules adopted
2570 by the division. Unless otherwise provided in the bylaws, any
2571 vacancy occurring on the board before the expiration of a term
2572 may be filled by an affirmative vote of the majority of the
2573 remaining directors, even if the remaining directors constitute
2574 less than a quorum, or by the sole remaining director. In the

HB 791

2015

2575 alternative, a board may hold an election to fill the vacancy,
2576 in which case the election procedures must conform to the
2577 requirements of the governing documents. Unless otherwise
2578 provided in the bylaws, a board member appointed or elected
2579 under this section is appointed for the unexpired term of the
2580 seat being filled. Filling vacancies created by recall is
2581 governed by s. 720.303(10) and rules adopted by the division.

2582 (10) RECORDING.—Any parcel owner may tape record or
2583 videotape meetings of the board of directors and meetings of the
2584 members; however, a parcel owner may not post the recordings on
2585 any website or other media that can readily be viewed by persons
2586 who are not members of the association. The board of directors
2587 of the association may adopt reasonable rules governing the
2588 taping of meetings of the board and the membership.

2589 Section 22. This act shall take effect July 1, 2015.