

CS/CS/CS/SB 1196 and 1222 — Community Associations

by Judiciary Committee; Military Affairs and Domestic Security Committee; Regulated Industries Committee; and Senators Fasano, Ring, Gaetz, Lynn, Crist, and Rich

The bill revises laws related to community associations, including condominium, homeowners', and cooperative associations. The bill permits condominium, cooperative, and homeowners' associations to demand payment of any future regular assessments from the tenant of a unit or parcel owner.

The bill revises and clarifies the property insurance requirements of condominium associations and condominium unit owners under ch. 718, F.S. The bill repeals the requirement that condominium unit owners must maintain property insurance coverage and the requirement that the condominium association must be an additional named insured and loss payee on policies issued to unit owners. It repeals the provision that a condominium association may purchase property insurance at the expense of the owner when the unit owner does not provide proof of insurance. It requires that residential condominium unit owner policies issued or renewed on or after July 1, 2010, include loss assessment coverage of \$2,000, for certain assessments with a deductible of no more than \$250 per direct property loss.

The bill creates the “Distressed Condominium Relief Act” to define the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties.

Regarding a mortgage lender’s liability for unpaid condominium assessments after a foreclosure, the bill increases the mortgage lender’s liability for unpaid assessments to the 12 months, instead of the current 6 months, immediately preceding the lender’s acquisition of title or 1 percent of the original mortgage debt, whichever is less.

It also permits condominium, cooperative, and homeowners' associations to demand payment from the tenant of any unit or parcel owner who owes unpaid monetary obligations to the association. The amount of a tenant’s rent owed to a unit or parcel owner would be credited for the amount he or she paid the association. The association may evict the tenant if he or she fails to make the required payment.

Regarding fire and elevator safety, the bill:

- Delays the requirement to update existing elevators in condominiums, cooperatives, or multifamily residential buildings with modifications for Phase II Firefighters’ Service, which permits firefighters to operate and control an elevator for evacuating the physically disabled in occupied buildings and for moving firefighters and equipment, until July 1, 2013, or until the elevator is replaced or requires major modifications, whichever occurs first.
- Permits a condominium association to opt to forego the requirement for emergency generated power for elevators in high-rise multifamily dwellings over 75 feet in height upon an affirmative vote of a majority of the voting interests of the condominium.

- Exempts condominiums and other multifamily buildings that are less than four stories in height from the requirement to install a manual fire alarm system required by section 9.6 of the Life Safety Code provided that the building has an exterior means of egress.
- Delays the retrofit deadline for fire sprinklers in condominium and cooperative association common areas from December 31, 2014 to until December 31, 2019. It permits the condominium association to completely exempt the building from the retrofit requirement upon an affirmative vote of a majority of the voting interests in the community. If a condominium or cooperative association does not vote to exempt the building from the requirement, the association must apply for a building permit for the retrofit before December 31, 2016.

Regarding condominium associations, the bill also:

- Requires intent to cause harm to the association or one or more of its members in order for a person to knowingly or intentionally fail to create or maintain accounting records;
- Expands the forms of information in the association's records that are not accessible to unit owners to include disciplinary, health, insurance, personnel records, and passwords;
- Revises the requirements related to financial reporting by the association;
- Includes communication services, information services, and Internet services within the scope of the type of bulk contracts that may be considered common expenses;
- Revises requirements related to the election of board members, the terms of board offices, vacancies on the board, and the qualifications of board members. It provides for a post-election certification by each newly elected or appointed director, and permits completion of the educational curriculum as an alternative to a written certification; and
- Authorizes the suspension of a unit owner's rights to use certain association facilities if he or she is more than 90 days delinquent for a regular or special assessment.

Regarding homeowners' associations, the bill also:

- Permits closure of certain board meetings at which proposed or pending litigation is discussed with the association's attorney;
- Revises the notice requirements for financial reports regarding reserve accounts;
- Prohibits directors, officers, or committee members from receiving any salary or compensation from the association for the performance of their duties;
- Permits the association to charge reasonable costs for copying records, including personnel fees and charges at an hourly rate for employee time to cover the administrative costs;
- Authorizes condominium associations to suspend a unit owner's use rights if the unit owner is delinquent for more than 90 days in the payment of a regular or special assessment;
- Permits fines of \$1,000 or more to become a lien on a parcel;
- Revises proxy voting and elections requirements;
- Provides additional disclosure to prospective purchasers;
- Revises requirements for special assessments in homeowners' associations before the turnover of the association by the developer;
- Provides that flagpoles that homeowners are entitled to erect are subject to all building codes, zoning setbacks, noise and lighting ordinances, and other government regulations; and

- Permits homeowners' associations to acquire leaseholds, memberships, or other possessory interests in recreational facilities, including country clubs, golf courses, and marinas.

If approved by the Governor, these provisions take effect July 1, 2010.

Vote: Senate 38-0; House 107-4