Civil Justice & Courts Policy Committee

Tuesday, January 12, 2010
10:00 AM - 12:00 PM
REED HALL (102 HOB)

MEETING PACKET

Larry Cretul
Speaker

Carl J. Domino
Chair

The Florida House of Representatives

Criminal & Civil Justice Policy Council

Civil Justice & Courts Policy Committee

Larry Cretul
Speaker

Carl J. Domino
Chair

January 12, 2010

AGENDA
10:00 AM – 12:00 PM
Reed Hall

I. Call Meeting to Order

II. Consideration of Bills

HB 47 Court Actions Involving Families by Planas

HB 115 Residential Properties by Ambler

HB 125 Rental Property Foreclosure or Short-sale Actions by Rogers

HB 327 Community Associations by Robaina

HB 361 Trust Administration by Wood

HB 409 Garnishment by Brisé

HB 437 Contingency Fee Agreements Between the Department of Legal Affairs and Private Attorneys by Eisnaugle

HB 449 Sanctions for Certain Court Pleadings by Steinberg

III. Adjourn

417 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 410-4922 Fax: (850) 413-0420

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice & Courts Policy Committee

Start Date and Time: Tuesday, January 12, 2010 10:00 am

End Date and Time: Tuesday, January 12, 2010 12:00 pm

Location: Reed Hall (102 HOB)

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 47 Court Actions Involving Families by Planas
HB 115 Residential Properties by Ambler
HB 125 Rental Property Foreclosure or Short-sale Actions by Rogers
HB 327 Community Associations by Robaina
HB 361 Trust Administration by Wood
HB 409 Garnishment by Brisé
HB 437 Contingency Fee Agreements Between the Department of Legal Affairs and Private Attorneys by Eisnaugle
HB 449 Sanctions for Certain Court Pleadings by Steinberg

NOTICE FINALIZED on 01/05/2010 16:15 by Ingram.Michele

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 47 Court Actions Involving Families
SPONSOR(S): Planas
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		De La Paz	De La Paz
2)	Criminal & Civil Justice Appropriations Committee			
3)	Criminal & Civil Justice Policy Council			
4)	Full Appropriations Council on Education & Economic Development			
5)				

SUMMARY ANALYSIS

This bill provides purposes and legislative intent regarding the implementation of a unified family court program in the circuit courts. The additional purposes and legislative intent include:

- To provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families, while at the same time resolving family disputes in a fair, timely, efficient, and cost-effective manner.

- That the courts embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system.

- To support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach.

- To focus on the needs of children who are involved in the litigation, refer families to resources that will make their relationships stronger, coordinate their cases to provide consistent results, and strive to leave families in better condition than when they entered the system.

This bill does not appear to have a fiscal impact on state or local governments and is effective upon becoming a law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Currently, legal issues involving children and families are frequently addressed by different divisions of the court, particularly in larger judicial circuits. In many cases, the parties are appearing before a different judge in each proceeding. Therefore, it is possible that a judge may be unaware of previous or pending related legal matters involving the same children or family before the court. Unified family courts are intended to address this problem.

Florida's initiative for a unified family court began as a result of increasing demands being placed on the judicial system by the large volume of cases involving children and families. As the number of family court filings significantly increased, the Supreme Court noted that it must seek to improve productivity and conserve resources. Against this background, the Court created the Family Court Steering Committee in 1994 to, among other things, advise the Court about the circuits' responses to families in litigation and make recommendations on the characteristics of a model family court.

In 2005, the Legislature implemented recommendations by the Florida Supreme Court related to the operation of a unified family court system. These recommendations were to:

• Allow the court system to create a unique identifier to identify all court cases related to the same family.

• Provide that specified orders entered in dependency court take precedence over court orders entered in other civil proceedings.

• Provide that final orders and evidence admitted in dependency actions are admissible in evidence in subsequent civil proceedings under certain circumstances.

This bill provides additional purposes and legislative intent regarding the implementation of a unified family court program in the circuit courts. These additional purposes are added to chapter 39, F.S., pertaining to proceedings relating to children; chapter 61, F.S., pertaining to dissolution of marriage, support, and custody; chapter 63, F.S., pertaining to adoption; section 68.07, F.S., pertaining to name change; chapter 88, F.S., pertaining to the Uniform Interstate Family Support Act; chapter 741, F.S., pertaining to marriage and domestic violence; chapter 742, F.S., pertaining to determination of parentage; chapter 743, F.S., pertaining to disability of nonage of minors removed; chapter 984, F.S., pertaining to children and families in need of services; chapter 985, F.S., pertaining to the juvenile

justice system; and part II of chapter 1003, F.S., pertaining to school attendance. The additional purposes and legislative intent include:

- To provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families, while at the same time resolving family disputes in a fair, timely, efficient, and cost-effective manner.

- That the courts embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system.

- To support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach.

- To focus on the needs of children who are involved in the litigation, refer families to resources that will make their relationships stronger, coordinate their cases to provide consistent results, and strive to leave families in better condition than when they entered the system.

B. SECTION DIRECTORY:

Section 1. amends s. 39.001, F.S., regarding the purposes of ch. 39, F.S.

Section 2. amends s. 61.001, F.S., regarding the purposes of ch. 61, F.S.

Section 3. amends s. 63.022, F.S., regarding legislative intent related to ch. 63, F.S.

Section 4. amends s. 68.07, F.S., regarding legislative intent related to petitions for a name change.

Section 5. creates s. 88.1041, F.S., regarding legislative intent applicable to ch. 88, F.S.

Section 6. amends s. 741.2902, F.S., regarding legislative intent applicable to the offense of domestic violence.

Section 7. creates s. 742.016, F.S., regarding legislative intent related to determination of parentage.

Section 8. creates s. 743.001, F.S., regarding legislative intent related to ch. 743, F.S.

Section 9. amends s. 984.01, F.S., regarding legislative intent related to ch. 984, F.S.

Section 10. amends s. 985.02, F.S., regarding legislative intent related to ch. 985, F.S. (juvenile justice system).

Section 11. creates s. 1003.201, F.S., regarding legislative intent related to ch. 1003, F.S.

Section 12. provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to court actions involving families; amending ss. 39.001, 61.001, 63.022, 68.07, 741.2902, 984.01, and 985.02, F.S., and creating ss. 88.1041, 742.016, 743.001, and 1003.201, F.S.; providing additional purposes relating to implementing a unified family court program in the circuit courts; providing legislative intent; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (o) is added to subsection (1) of section 39.001, Florida Statutes, to read:

39.001 Purposes and intent; personnel standards and screening.--

(1) PURPOSES OF CHAPTER.--The purposes of this chapter are:

(o) To provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the efforts of the state courts system to improve the resolution of disputes involving

children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 2. Subsection (2) of section 61.001, Florida Statutes, is amended to read:

61.001 Purpose of chapter.--

(2) Its purposes are:

(a) To preserve the integrity of marriage and to safeguard meaningful family relationships;

(b) To promote the amicable settlement of disputes that arise between parties to a marriage; ~~and~~

(c) To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage; and

(d) To provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who

are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the efforts of the state courts system to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 3. Subsection (6) is added to section 63.022, Florida Statutes, to read:

63.022 Legislative intent.--

(6) It is the intent of the Legislature to provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the efforts of the state courts system to improve the resolution

of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 4. Subsection (10) is added to section 68.07, Florida Statutes, to read:

68.07 Change of name.--

(10) It is the intent of the Legislature to provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the efforts of the state courts system to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge";

collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 5. Section 88.1041, Florida Statutes, is created to read:

88.1041 Legislative intent.--It is the intent of the Legislature to provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the efforts of the state courts system to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system focus on the needs of children who are involved in the

litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 6. Subsection (3) is added to section 741.2902, Florida Statutes, to read:

741.2902 Domestic violence; legislative intent with respect to judiciary's role.--

(3) It is the intent of the Legislature to provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system as long as such methods do not conflict with the legislative intent expressed in subsections (1) and (2). It is the intent of the Legislature to support the development of a unified family court and to support the efforts of the state courts system to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. Case management or alternative dispute resolution processes must comply with existing laws and court rules governing the use of mediation, case management, and alternative

dispute resolution in cases involving injunctions for protection brought under this chapter. The Legislature supports the goal that the legal system focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 7. Section 742.016, Florida Statutes, is created to read:

742.016 Legislative intent.--It is the intent of the Legislature to provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the efforts of the state courts system to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system focus on the needs of children who are involved in the

litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 8. Section 743.001, Florida Statutes, is created to read:

743.001 Legislative intent.--It is the intent of the Legislature to provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the efforts of the state courts system to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 9. Paragraph (g) is added to subsection (1) of section 984.01, Florida Statutes, to read:

984.01 Purposes and intent; personnel standards and screening.--

(1) The purposes of this chapter are:

(g) To provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the efforts of the state courts system to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 10. Paragraph (j) is added to subsection (1) of section 985.02, Florida Statutes, to read:

985.02 Legislative intent for the juvenile justice system.--

(1) GENERAL PROTECTIONS FOR CHILDREN.--It is a purpose of the Legislature that the children of this state be provided with the following protections:

(j) A fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the efforts of the state courts system to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system. This section may not be construed to contravene legislative intent provided in this chapter relating to protecting the public from acts of delinquency, ensuring that juveniles found to have

committed a delinquent act understand the consequences and serious nature of such behavior, and transferring juveniles from the juvenile justice system to the adult system as provided in this chapter.

Section 11. Section 1003.201, Florida Statutes, is created to read:

1003.201 Legislative intent.--It is the intent of the Legislature to provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families and a resolution of family disputes in a fair, timely, efficient, and cost-effective manner. It is the intent of the Legislature that the courts of this state embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system. It is the intent of the Legislature to support the development of a unified family court and to support the efforts of the state courts system to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach that includes coordinated case management; the concept of "one family, one judge"; collaboration with the community for referral to needed services; and methods of alternative dispute resolution. The Legislature supports the goal that the legal system focus on the needs of children who are involved in the litigation, refer families to resources that will make families' relationships stronger, coordinate families' cases to provide consistent results, and strive to leave families in better condition than when the families entered the system.

Section 12. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 115 Residential Properties
SPONSOR(S): Ambler
TIED BILLS: None **IDEN./SIM. BILLS:** SB 398

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		Bond	De La Paz
2)	Insurance, Business & Financial Affairs Policy Committee			
3)	Finance & Tax Council			
4)	Criminal & Civil Justice Policy Council			
5)				

SUMMARY ANALYSIS

This bill makes a number of changes to the regulation of community association managers, condominium associations, homeowners associations, and residential construction, including:

- Requires license revocation of certain community association managers guilty of multiple offenses.
- Limits borrowing by condominium associations.
- Limits condominium association access to units.
- Allows some co-owners of condominium units to serve together on the board.
- Moves new director certification (of reading condominium law and association documents) from before election to after, lowers the requirement, and provides for alternate education.
- Requires the board to hear and notice an amendment to condominium bylaws at two meetings.
- Expands authority of a condominium association to enter into bulk contracts for the benefit of members.
- Allows condominium association to collect regular assessments from a tenant of a delinquent member.
- Limits emergency powers of condominium associations.
- Allows condominium association to suspend use rights and voting rights of a delinquent unit owner.
- Expands state regulatory jurisdiction over condominium associations.
- Requires the Condominium Ombudsman to prepare an educational booklet.
- Creates incentives and liability protection for bulk buyers of distressed condominium associations.
- Requires additional disclosure to members of a homeowners' association if the association budget does not budget for deferred expenditures.
- Provides that a fine greater than $1,000 by a homeowners' association against a parcel owner may become a lien on the property.
- Revises the procedure and requirements for board meetings and elections.
- Requires that an elected director of a condominium association or a homeowners' association must certify in writing within 30 days of being elected that he or she has read the governing documents of the association.
- Provides for additional disclosure to prospective purchasers.
- Repeals current law providing for pre-suit mediation for disputes between a homeowners' association and a parcel owner before the dispute may be filed in court; repeals the requirement that the Department of Business and Professional Regulation arbitrate homeowners' association recall election disputes; and provides for pre-suit mediation or pre-suit arbitration for disputes between homeowners' associations and a parcel owner or owners and parcel owners within the same homeowners' association before a complaint may be filed in court.

This bill appears to have a negative recurring fiscal impact on state government affecting the Division of Florida Condominiums, Timeshares and Mobile Homes Trust Fund, commencing in FY 2010-2011, of approximately $350,000 annually. This bill does not appear to have a fiscal impact on local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Condominium associations are governed internally by an association whose members are the owners of units within the association. Many, but not all, residential communities (that are not a condominium or cooperative) are similarly governed by a homeowners association made up of parcel owners. Collectively, these types of associations are referred to as community associations, and the separate statutes governing each type of association are similar in many ways. Condominium associations pay $4 per unit per year to the Florida Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares and Mobile Homes for state regulation of such associations. There is no state agency regulating homeowners associations and they pay no regulatory fee.

A Community Association Manager is a person licensed by the Department of Business and Professional Regulation, Division of Professions, to manage community associations. Any person managing an association of 10 or more units for pay must be licensed.

This bill amends various laws relating to community associations and Community Association Managers as follows:

Effect of Bill

Regulation of Community Association Managers

One ground for discipline of a Community Association manager under current law requires the Department of Professional Regulation to prove that a Community Association Manager has committed "gross misconduct or gross negligence." This bill amends s. 468.436(2)(b)5., F.S., to remove the term "gross" from this standard, thus providing a lower standard of proof for discipline of a Community Association Manager.

Current law gives the Department of Business and Professional Regulation discretion on the appropriate discipline of a Community Association Manager. This bill removes some of that discretion by creating s. 468.436(6), F.S., to provide that, upon the fifth finding of guilt, or the third finding of guilt of the same offense, the license of a Community Association Manager must be revoked.

Borrowing by a Condominium Association

A condominium association, like any other entity, has the authority to borrow money to accomplish the purposes of the entity. Current law does not specifically limit borrowing by a condominium association, other than through the general fiduciary duty that the directors owe to the association. Unless the governing documents require otherwise, the board of administration may enter into a loan without a vote of the membership. This bill amends s 718.111(3), F.S., to provide that borrowing money is a form of a special assessment. Before entering into a loan or line of credit, the board of administration must either give notice to the members of specific use of the funds or must obtain prior approval of two-thirds of the membership.

Access to Condominium Units by the Association

In a condominium, unit owners share a building. Sometimes, in order to maintain that building the association must give access to the interior of units to contractors and workers. Section 718.111(5), F.S., gives an association a right of access to condominium units. This bill amends s. 718.111(5), F.S., to require in non-emergency situations that an association give a unit owner 24 hours notice that the association will be accessing the unit, requires that at least two persons be in attendance during the access, and requires that one of the two be an employee or director of the association. The prior notice of access must give the name of an authorized representative who will be accessing the unit.

Condominium Association Assessment Meeting Notice

The board of administration of a condominium association sets the level of regular assessments necessary for the operation of the association, and may impose special assessments to pay for extraordinary or unexpected expenses. Current law requires that an association publish notice of any meeting of the board, and requires the notice of a meeting to consider assessments to contain the *estimated* amount of the assessment to be considered. This bill amends s. 718.112(2)(c), F.S., to require the meeting notice to contain the *actual cost* of the assessment, not the estimated cost.

Condominium Association Directors

Current law provides that, if no person files to run for a particular seat against an incumbent director, that director is eligible for reappointment without an election. This bill amends s. 718.112(2)(d)1., F.S., to provide that if the total number of candidates for election to the board is equal to or is less than the number of vacancies, the incumbent candidates are reappointed without election.

Current law provides that co-owners of a condominium unit may not serve together on the association board of administration. It is unclear under current law whether co-owners who own two or more units in an association are eligible to serve together on the board of administration. This bill amends s. 718.112(2)(d)1., F.S., to provide that co-owners who own more than one condominium unit in an association are eligible to serve together on the board of administration, and that co-owners may serve on the board together if there is an insufficient number of persons running for the board.

Current law provides that a person who is delinquent in payment of "any fee" is ineligible for election to the board of administration, and a current director who falls more than 90 days delinquent in any fee is removed by action of law from the board. This bill amends ss. 718.112(2)(d)1. and 718.112(2)(n), F.S., to provide that delinquency in payment of any "fee, fine, or special or regular assessment" disqualifies a person from running for the board, and any director or officer with a delinquency of any fee, fine, or special or regular assessment of 90 days or more is removed from the board.

Current law requires a person running for a seat on the board of administration must certify that he or she has read the condominium law and the association's governing documents upon qualifying to run

for the office. A copy of the certification of each candidate must be distributed to unit owners with the notice of the election. This bill amends s. 718.112(2)(d)3., F.S., to remove the certification requirement.

The bill requires newly elected directors, within 90 days of being elected, to certify in writing that they have read the association's declarations of covenants and restrictions, articles of incorporation, bylaws, and current written policies, or, in lieu thereof, submit a certificate of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider. Failure to timely file the written certification or educational certificate automatically disqualifies a director from serving on the board.

This bill further provides that these requirements for membership on the board of administration do not apply to a timeshare condominium.

Amendment of Condominium Association Bylaws

Just as the declaration of condominium is analogous to a state or federal constitution, the bylaws of an association are analogous to the statutory laws of an association. Current law does not require any particular method for amendment of the bylaws of an association. This bill creates s. 718.112(2)(h)4., F.S. to provide that if the bylaws are amended by the directors, they must be noticed and discussed at two meetings before passage (analogous to two readings before the Legislature).

Communication Services Provided to a Condominium Association

Section 718.115, F.S., defines common expenses, which are the expenses of a condominium association, and authorizes the association to expend funds for such expenses. Paragraph (1)(d) provides that the declaration of condominium may provide for, and charge to the unit owners, the cost of a master television antenna or a bulk contract for cable television service. The cost of a bulk cable contract may be apportioned on a per unit basis rather than according to the usual allocation of common expenses of the association. Bulk contracts must provide an opt-out provision for any unit occupied by a deaf person, blind person, or any person receiving SSI[1] or food stamps.

The bill amends s. 718.115(1)(d), F.S., to expand the scope of authorized bulk contracts. The bill removes references to master antenna television system or duly franchised cable television services with an authorized to enter into bulk contracts for communication services as defined in ch. 202, F.S.,[2] information services, or Internet service.

The bill also provides that only "cable or video service" is subject to the opt-out provisions. Accordingly, to the extent that a communications service, information service or internet services is not a cable or video service, the opt-out provisions will not apply.

Condominium Association Assessments; Collection from Tenants

A condominium association is in effect a partnership between unit owners with a common interest in a condominium building or buildings. To operate, an association must collect regular assessments from the unit owners in order to pay for management, maintenance, insurance, and reserves for anticipated future major expenses. Section 718.116, F.S., provides for the assessment and collection of periodic and special assessments to fund the association. A unit owner is liable for all assessments that come due while he or she is the owner, and is jointly liable with past owners for any assessment owed by such previous owners. Of course, in an ordinary voluntary sale the buyer insists that all assessments be brought current through the date of sale, and an owner's title insurance company (if purchased) insures the buyer should the closing agent not properly see to payment of assessments through closing.

[1] SSI is Supplemental Security Income under Title XVI of the Social Security Act.
[2] Chapter 202, F.S., is the Communications Services Tax Simplification Law.

Foreclosure, an involuntary sale, is different. A unit owner who stops paying the mortgage will likely also stop paying the regular assessments. Should the condominium unit be sold to a third party at foreclosure sale, that buyer assumes responsibility for all of the past due assessments. The usual buyer at a foreclosure sale, however, is the lending institution. Section 718.116(1)(b), F.S., limits the liability for past due assessments of a first mortgage holder who is the winning bidder at the foreclosure sale to only being responsible to the association for the lesser of 6 months regular assessments or 1% of the original mortgage loan. Uncollectible past due assessments that result from this limitation are passed on to all of the unit holders through increased regular assessments and may be passed on to the unit owners by special assessment.

In the past, foreclosures were infrequent and were generally resolved within 6 months, leaving condominium associations with small infrequent manageable foreclosure losses. Recent economic downturns have led to significant numbers of condominium units in foreclosure which, coupled with typical foreclosure delays now reaching approximately 18 months, have led to significant financial troubles in condominium associations statewide.[3] Of great frustration to associations is situations where the unit is rented and the unit owner in default keeps the rents while the association is required to allow the tenant to use the common areas.[4]

This bill amends s. 718.116, F.S., to give the association the right to demand that any tenant within a condominium unit that is in foreclosure pay future regular assessments to the association. The tenant may deduct such regular assessments paid to the association from the tenant's rent. The association may evict a tenant that refuses to pay.

Condominium Association Emergency Powers

Section 718.1265, F.S., gives the board of administration of condominium association very broad powers to deal with an emergency. For instance, the board can borrow, move money from reserves, meet without notice, evacuate the building, make emergency repairs, and the like. This bill amends the emergency powers provisions to provide that emergency powers may only be exercised during the term of the stated emergency unless more than 20% of the units are uninhabitable.

Transfer of Condominium Association Control

A condominium association is originally controlled by the developer of the association. Section 718.301, F.S., requires the developer to transfer control to a board elected by the unit owners upon the first happening of any one of seven grounds. Paragraph (1)(f) requires transfer of control if a court has appointed a receiver over the developer and the receivership has not been dismissed within 30 days of appointment. This bill amends s. 718.301(1)(f), F.S., to provide that transfer of control is not required if the receivership court determines that transfer of control would be detrimental to the association or its members.

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[3] See, for instance: Iuspa-Abbott, *Condo Meltdown*, Daily Business Review, July 22, 2008; Bayles, *Help for Homeowners Associations*, HeraldTribune.com, October 6, 2008; Andron, *Condo Associations in Eye of Foreclosure Storm*, Miami Herald, April 21, 2008; 2008 *Florida Community Association Mortgage Foreclosure Survey*, April 16, 2008; Geffner, *Condo Foreclosures Hurt Others, Too*, MSNBC.com, August 29, 2008; Moody, *Banks Stick Unpaid Fees to Condos*, Florida Today, October 26, 2008; Owers, *Foreclosures Lead to Budget Problems for Associations*, South Florida Sun-Sentinel, February 24, 2009; *State of Distress: Florida Community Association Mortgage Foreclosures Spawn Crisis Within State's Condo and HOA Population*, February 24, 2008 (survey finding that nearly two-thirds of associations were impacted by foreclosure losses). All articles on file with committee staff.

[4] See s. 718.106(4), F.S.

Suspension of Condominium Use and Voting Rights for Delinquency

Section 718.106, F.S., provides that a condominium unit owner is entitled vote on association matters and may use the common areas of the association. Subsection (4) provides that the right to use the common areas is transferred to the tenant of a condominium unit. Nothing in statute allows the association to suspend voting or use rights when a unit owner is delinquent. Section 718.303, F.S., sets forth the obligations that unit owners and tenants owed to the condominium association.

The bill amends s. 718.303(3), F.S., to provide that, where a condominium unit owner is more than 90 days delinquent in the payment of any regular or special assessment, the condominium association may suspend the right of the unit owner to use the common areas. The suspension will also apply to tenants, occupants, and guests of the unit owner. The suspension may only extend for a reasonable period of time. However, the association may not suspend access to a limited common element dedicated to that one unit,[5] common elements necessary to access the unit, utility services provided to the unit, parking spaces, or elevators.[6]

A condominium association seeking to impose a fine must give the person subject to the fine notice of a hearing and the hearing must be before a committee of unit owners who are not members of the board of administration. This bill amends s. 718.303(3), F.S., to require the same notice and hearing before suspension of use rights; but then creates s. 718.303(4), F.S., to provide that a suspension of use rights for nonpayment of assessments (or the imposition of fine for late payment) requires a hearing before the board of administration before it may be imposed.

The bill also creates s. 718.303(5), F.S., to provide that a condominium association may suspend the voting rights of a unit owner who is 90 or more days delinquent in any monies owed to the association.

Regulation of Condominium Associations by DBPR

Section 718.501, F.S., provides the regulatory framework by which the Department of Business and Professional Regulation (DBPR) regulates condominium associations. After turnover of association control from the developer to unit owners, DBPR only has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to association records. This bill amends s. 718.501(1), F.S. to the jurisdiction of DBPR after turnover to add failure to maintain the common elements.

Section 718.501(1)(d), F.S., lists the remedies and penalties available to DBPR after a finding that an association or an individual has violated an applicable provision of the condominium law. This bill adds additional remedies to:

- Provide that, where DBPR finds that an officer or director of an association has intentionally falsified association documents with the intent to conceal material facts, the division must prohibit the officer or director from acting as an officer or director of any condominium, cooperative or homeowners association.

- Provide that, where DBPR finds that any person has derived an improper personal benefit from a condominium association, DBPR must order the person to pay restitution to the association and reimburse DBPR for the cost of investigation and prosecution.

[5] For instance, a balcony is typically categorized as a limited common element dedicated to the exclusive possession of one unit.

[6] Some of the common areas that could be placed off-limits to a delinquent unit owner, and the guests and tenants of that unit owner, would include swimming pools, spas, gyms, workout rooms, tennis courts, golf courses, meeting rooms, and the like.

Florida Condominium Handbook

This bill requires the Condominium Ombudsman to publish a Florida Condominium Handbook.

Distressed Condominiums

This bill creates part VII of ch. 718, F.S., consisting of ss. 718.701, 718.702, 718.703, 718.704, 718.705, 718.706, 718.707, and 718.708, F.S. Section 718.701, F.S., provides that part VII of ch. 718, F.S., may be cited as the "Distressed Condominium Relief Act."

Section 718.103(16), F.S., defines a developer as one "who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business . . . ." In essence, the statute creates two classes of developers: those who create the condominium by executing and recording the condominium documents and those who offer condominium units for sale or lease in the ordinary course of business. There are advantages that may accrue with the status as successor developer, including acquisition of certain developer-retained rights under the condominium documents and the ability to control the condominium association by electing or designating a majority of the directors of the condominium association board of directors. On the other hand, there are certain disadvantages, including potential warranty liability, liability for prior financial mismanagement of the condominium association, and loss of the ability to control the condominium association.[7]

The bill creates s. 718.702, F.S., to provide legislative findings and legislative intent. The findings include a finding that potential successor purchasers of condominium units are unwilling to accept the risk of purchase because the potential liabilities inherited from the original developer are imputed to the successor purchaser, including the foreclosing mortgagee.[8] The bill provides a statement of legislative intent that it is public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums.

Definitions

The bill amends the definition of "developer" s. 718.103(16), F.S., to exclude a bulk assignee or a bulk buyer. The bill creates s. 718.703, F.S., to define "bulk assignee" as a person who acquires more than seven condominium parcels as provided in s. 718.707, F.S., and receives an assignment of some or all of the rights of the developer under specified recorded documents. It also defines "bulk buyer" as a person who acquires more than seven condominium parcels but who does not receive an assignment of developer rights other than the right to conduct sales, leasing, and marketing activities within the condominium.

Changing the definition of "developer" to exclude bulk buyers and bulk assignees will have the effect of limiting the jurisdiction of DBPR over such persons under s. 718.501, F.S. Under s. 718.501(1), F.S., DBPR has full jurisdiction over an association controlled by a developer to enforce any provision of the condominium laws, but has only limited jurisdiction over an association not controlled by a developer.

Assignment and Assumption of Developer Rights

Creates s. 718.704, F.S., relating to the assignment and assumption of developer rights. In general, a bulk assignee assumes all liabilities of the developer. However, a bulk assignee is not liable for:

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[7] Schwartz, *The Successor Developer Conundrum in Distressed Condominium Projects*, The Florida Bar Journal, Vol. 83, No. 7, July/August 2009.

[8] For instance, in one case the construction lender foreclosed after the original developer defaulted on a loan. The lender took title to condominium project, completed construction, and, while holding itself out as developer and owner of project, advertised and sold units to purchasers. The court found that the lender became the developer of the project and therefore liable for performance of express representations made to buyers, for patent construction defects in entire condominium project, and for breach of any applicable warranties due to defects in portions of project completed by lender. *Chotka v. Fidelco Growth Investors*, 383 So.2d 1169 (Fla. 2nd DCA 1980).

- Construction warranties, unless related to construction work performed by or on behalf of the bulk assignee.

- Funding converter reserves for a unit not acquired by the bulk assignee.

- Providing converter warranties on any portion of the condo property except as provided in a contract for sale between the assignee and a new purchaser.

- Including in the cumulative audit required at turnover for an audit of income and expenses during the period prior to assignment.

- Any actions taken by the board prior to the time at which the bulk assignee appoints a majority of the board.

- The failure of a prior developer to fund previous assessments or resolve budgetary deficits.

An acquirer of condominium parcels is not considered a bulk assignee or a bulk buyer if the transfer of parcels was done to hinder, delay, or defraud any purchaser, unit owner, or the association, or if the acquiring person or entity is considered an insider.[9]

Development rights may be assigned to a bulk assignee by the developer, by a previous bulk assignee, or by a court of competent jurisdiction acting on behalf of the developer or previous bulk assignee.

- There may be more than one bulk buyer but not more than one bulk assignee within a condominium at any particular time.
- If more than one acquirer receives an assignment of development rights from the same person, the bulk assignee is the acquirer who first records the assignment in the applicable public records.

Transfer to Unit Owner-Controlled Board

The bill creates s. 718.705, F.S., relating to the transfer of control of the condominium board of administration. The bill provides that transfer of condominium units to a bulk assignee is not a transfer that would require turnover. However, units transferred from the bulk assignee count for purposes of determining when turnover is required.

In an ordinary turnover, the developer is required to deliver certain items and documents to the new board of administration that is controlled by unit owners. A bulk assignee is only required, however, to turnover items and documents that the bulk assignee actually has. A bulk assignee has the duty to attempt to obtain turnover materials from the original developer, and must list materials that the bulk assignee was unable to obtain.

Sale or Lease of Units by a Bulk Assignee or a Bulk Buyer

Under current law, a successor developer may be liable for filing anew all of the condominium documents for regulatory review. The bill creates s. 718.706, F.S., relating to the sale or lease of units by a bulk assignee or a bulk buyer: Prior to the sale or lease of units for a term of more than 5 years, a bulk assignee or a bulk buyer must file the following documents with the Division of Florida Condominiums, Timeshares and Mobile Homes in the Department of Business and Professional Regulation:

- Updated prospectus of offering circular, or a supplement, which must include the form of contract for purchase and sale;
- Updated Frequently Asked Questions and Answers sheet;

[9] The bill references the definition of "insider" at s. 726.102(7), F.S. Chapter 726, F.S., prohibits fraudulent transfers.

- Executed escrow agreement if required under s. 718.202, F.S., relating to sales or reservation deposits prior to closing; and
- Financial information required under s. 718.111(13), F.S. (association financial report for preceding fiscal year), unless the report does not exist for the previous fiscal year prior to acquisition by bulk assignee or accounting records cannot be obtained in good faith, in which case notice requirements must be met.

In addition, a bulk assignee (but not a bulk buyer) must file with the division and provide each purchaser with a disclosure statement that includes, but is not limited to, the following:

- A description of any rights of the developer assigned to the bulk assignee;
- A statement relating to the seller's limited liability for warranties of the developer; and
- If the condominium is a conversion, a statement relating to the seller's limited obligation to fund converter reserves or to provide converter warranties under s. 718.618, F.S., relating to converter reserve accounts.

Both bulk assignees and bulk buyers must comply with the nondeveloper disclosure requirements of s. 718.503(2), F.S., relating to disclosures by unit owners prior to the sale of a unit.

Similar to the restrictions on developers while they are in control of the association, a bulk assignee may not waive reserves, reduce reserves, or use a reserve for a purpose other than set aside for, unless such waiver, reduction or use is approved by a majority of the voting interests not under the control of the developer, bulk assignee, or a bulk buyer.

While in control of the association, a bulk assignee or a bulk buyer must comply with the requirements of s. 718.302, F.S., which section regulates contracts entered into by the association.

A bulk buyer must comply with the requirements of the declaration regarding the transfer of any unit by sale, lease or sublease. No exemptions afforded to a developer regarding the sale, lease, sublease, or transfer of a unit are afforded to a bulk buyer.

Limitations

The bill creates s. 718.707, F.S., to provide a time limitation for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the parcels were acquired prior to July 1, 2012.

Liabilities of Developers and Others

The bill creates s. 718.708, F.S., to provide that an assignment of developer rights does not release the developer from any liabilities under the condominium declaration or ch. 718, F.S. The section further provides that nothing in the act waives, releases, compromises, or limits the liability of contractors, subcontractors, materialmen, manufacturers, architects, engineers, or any participant in the design or construction of a condominium for any claim brought by the association, unit owners, bulk assignees, or bulk buyers relating to the design, construction defects, misrepresentations, or violations of ch. 718, F.S., except as provided in the act.

Homeowners' Associations -- Board and Committee Meetings

Current law at s. 720.303(2), F.S., provides procedures for all homeowners' association board meetings and some committee meetings. A meeting of the board occurs whenever a quorum of the board gathers to conduct association business. In general, board and committee meetings are open to all members. Paragraph (2)(a) provides that a meeting of the board of directors or a committee to discuss pending or proposed litigation where the contents of the meeting would otherwise be covered by the attorney-client privilege may be closed to the members. Paragraph (2)(b) provides that, notwithstanding any other law, meetings between the board or a committee and an attorney to discuss

personnel matters may be closed to members. It is possible that these two paragraphs are in conflict because of the term "nowithstanding."

This bill amends s. 720.303(2)(b), F.S., to provide that all board or committee meetings to discuss "proposed or pending litigation" may be closed to the members, and all board or committee meetings regarding personnel matters may be closed to the members regardless of whether the association attorney is present at such meeting.

Homeowners' Associations -- Member Access to Records

Current law requires a homeowners' association to provide members of the association access to the records of the association within 10 business days of a written request for inspection or copying of the records. A member may sue the association for failure to timely provide the required access. This bill amends s. 720.303(5)(a), F.S., to require that a member request for access to records must be sent by certified mail, return receipt requested, if the member wishes to sue for failure to provide the required access.

Current law allows an association to charge a member for copies of records of the association. The association may charge up to 50 cents a page or, if the copies are made by an outside vendor, the association may charge the actual cost charged by the vendor. This bill amends s. 720.303(5)(c), F.S., to provide that an association copying more than 25 pages may charge a member the actual cost of copying, including reasonable costs for employees.

Homeowners' Associations -- Reserve Accounts

Current law allows, but does not require, a homeowners association to provide for reserve accounts.[10] A reserve account is in effect a savings account whereby an association collects periodic advance payments to cover future anticipated capital expenditures and deferred maintenance items. Monies in a reserve account may only be spent for maintenance, repair and replacement of the reserve item. A reserve account, once established, must remain in existence.

This bill amends s. 720.303(6), F.S., to allow the members of an association to terminate a reserve account. This bill also allows an association to create funding accounts that are not formal reserve accounts, and creates a disclosure that informs members that such funding accounts are not protected from being used by the association for expenditures that are unrelated to the reserve item.

Homeowners' Associations - Compensation of Directors

There is no prohibition in current law on compensation of the directors, officers, or committee members of a homeowners' association. This bill creates s. 720.303(12), F.S., to provide that a director, officer or committee member may not receive any salary or compensation from the association for the performance of his or her duties and may not benefit in any other way financially from service to the association. This bill also creates exceptions to this limitation, which exceptions provide that this limitation does not prohibit:

- Participation in a financial benefit accruing to all or a significant number of members as a result of lawful actions taken by the board including in part maintenance or repair of community assets;
- Reimbursement for out-of-pocket expenses subject to approve in accordance with procedures established by the governing documents;
- Recovery of insurance proceeds which are derived from a policy of insurance maintained by the association for the benefit of its members;

[10] Probably the most common reserve account applicable to a homeowners association is for repaving of private roads.

- Any fee or compensation authorized in the governing documents; or
- Any fee or compensation authorized in advance by a vote of a majority of the voting interests voting in person or by a proxy at the meeting of the members.

Borrowing by a Homeowners Association

A homeowners association, like any other entity, has the authority to borrow money to accomplish the purposes of the entity. Current law does not specifically limit borrowing by a homeowners association, other than through the general fiduciary duty that the directors owe to the association. Unless the governing documents require otherwise, the board of directors may enter into a loan without a vote of the membership. This bill amends s 720.303, F.S., to provide that borrowing money by a homeowners association is a form of a special assessment. Before entering into a loan or line of credit, the board of directors must either give notice to the members of specific use of the funds or must obtain prior approval of two-thirds of the membership.

Homeowners Association Transfer Fees

The covenants of a homeowners association may contain a requirement that the parties to any transfer of a parcel within the association must pay a fee to the association for such transfer. Current law generally prohibits transfer fee covenants, although transfer fees payable to a homeowners association are an exception to the prohibition. See s. 689.28(2)(c)7., F.S.

This bill adds s. 720.303(14), F.S., to prohibit a homeowners association from charging or collecting a transfer fee. However, an association may collect a security deposit from a tenant provided that the deposit does not exceed one month's rent. The security deposit may only secure the association against damage by the tenant to the common areas or association property. The association must give a tenant notice of a claim against the deposit within 15 days of the tenant vacating the property.

Homeowners' Associations – Display of Flag

Section 720.304(2)(a), F.S., allows a homeowner in a homeowners association to display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and one portable, removable official flag, in a respectful manner, not larger than 4½ feet by 6 feet, which represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag. This right exists, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association. This bill amends the provisions on flags other than the United States flag to provide that those provisions only apply on Armed forces Day, Memorial Day, Flag Day, Independence Day, and Veteran's Day.

The changes made to paragraph (2)(a) do not affect the right of a homeowner under s. 720.304(2)(b), F.S., to also erect a freestanding flagpole no more than 20 feet high on any portion of the homeowner's real property, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association, if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. A homeowner with a freestanding flagpole may display the same additional flags on any day.

Homeowners' Association -- Fines as a Lien

Current law requires members and their tenants, guests and invitees to comply with association governing documents. Among other remedies available to associations for a violation of the governing documents, an association may levy a reasonable fine of up to $100 per violation. A fine for a continuing violation may not exceed $1,000 unless the governing documents specifically allow a larger fine. A fine may not become a lien against a parcel.

This bill amends s. 720.305(2), F.S., to provide that a fine in excess of $1,000 may become a lien against a parcel.

Homeowners' Association -- Proxy Voting

Current law generally allows proxy voting in elections where the parcel owners may vote. A proxy is a written authorization allowing one person to cast another's vote. Current law does not allow nor does it prohibit an association from utilizing absentee balloting.

This bill amends s. 720.306(8), F.S. to create a format for absentee balloting. The bill provides that if the governing documents allow a parcel owner who is not in attendance at a meeting to cast a secret ballot, the ballot must be placed in an inner envelope with no identifying markings and delivered to the association in an outer envelope with the required information. The outer envelope must include the name of the owner, the lot or parcel for which the vote is being cast, and the signature of the parcel owner casting the ballot. Once the eligibility to vote is verified and it is confirmed that there are no other ballots submitted for that lot or parcel, the inner envelope must be removed and added to the ballots of members who voted personally and must be opened when the ballots are counted. If there is more than one ballot submitted for a lot or parcel, the ballots for that lot or parcel are disqualified. No ballot received after the close of balloting by a vote of the membership will be considered.

Homeowners' Association -- Director Certification

Current law provides criteria for persons seeking to be elected to the board of directors to a homeowners association. This bill amends homeowner association election law at s. 720.306(9), F.S., to add a requirement that a newly elected director must certify that he or she has read and will uphold the governing documents of the association and that the director will faithfully discharge the director's fiduciary obligations to the association. A director that fails to file the certification with secretary of the association within 30 days after election is disqualified from service on the board of directors. The secretary of the association must maintain the certification for 5 years from election. The failure of the association to have a certification on file does not affect the validity of any action of the association.

One possible interpretation is that the failure to timely file the certification after an election may forever disqualify a person from service on the board of directors. The requirement does not appear to apply to persons appointed to the board to fill a vacancy.

Homeowners Association Assessments; Collection from Tenants

A homeowners association is in effect a partnership between parcel owners with a common interest in a neighborhood and common neighborhood improvements. To operate, an association must collect regular assessments from the parcel owners in order to pay for management, maintenance, insurance, and perhaps reserves for anticipated future major expenses. Sections 720.308 and 720.3085, F.S., provide for the assessment and collection of periodic and special assessments to fund the association. A parcel owner is liable for all assessments that come due while he or she is the owner, and is jointly liable with past owners for any assessment owed by such previous owners. Of course, in an ordinary voluntary sale the buyer insists that all assessments be brought current through the date of sale, and an owner's title insurance company (if purchased) insures the buyer should the closing agent not properly see to payment of assessments through closing.

Foreclosure, an involuntary sale, is different. A unit owner who stops paying the mortgage will likely also stop paying the regular assessments. Should the home be sold to a third party at foreclosure sale, that buyer assumes responsibility for all of the past due assessments. The usual buyer at a foreclosure sale, however, is the lending institution. Section 720.3085(2)(c), F.S., limits the liability for past due assessments of a first mortgage holder who is the winning bidder at the foreclosure sale to only being

responsible to the association for the lesser of 12 months regular assessments or 1% of the original mortgage loan. Uncollectible past due assessments that result from this limitation are passed on to all of the parcel holders through increased regular assessments and may be passed on to the parcel owners by special assessment.

In the past, foreclosures were infrequent and were generally resolved within 6 months, leaving homeowners associations with small infrequent manageable foreclosure losses. Recent economic downturns have led to significant numbers of homes in foreclosure which, coupled with typical foreclosure delays now reaching approximately 18 months, have led to financial troubles in some homeowners associations. Of great frustration to associations is situations where the home is rented and the homeowner in default keeps the rents while the association is required to allow the tenant to use the common areas.[11]

This bill amends s. 720.3085, F.S., to give the association the right to demand that any tenant within a home that is in foreclosure pay future regular assessments to the association. The tenant may deduct such regular assessments paid to the association from the tenant's rent. The association may evict a tenant that refuses to pay.

Homeowners Association Agreements

A condominium association is restricted when entering into management, maintenance and operational agreements by s. 718.3025, F.S. This bill creates s. 720.3095, F.S., to impose the same restrictions on agreements with homeowners associations. Such agreements must be in writing and be specific as to the terms. The agreement must disclose any financial or ownership relationship that the contractor has the developer or with any board member. This section does not apply to contracts for the convenience of the members and that the association does not pay for.

This bill also creates s. 720.3096, F.S., to further limit certain agreements by homeonwners associations. A homeowners association is a non-profit entity governed by ch. 617, F.S., which chapter governs all non-profit corporations. Section 617.0832, F.S., governs director conflicts of interest. The section authorizes insider contracts[12] if any director voting for the insider contract discloses the director's interest in the contractor. The bill requires that an insider contract entered into by a homeowner association must not only comply with s. 617.0832, F.S., but in addition must be approved by a two-thirds vote of the directors. Also, at the next regular or special meeting of the members, the members must be notified of the insider contract and must be given an opportunity to, by a majority vote, cancel the contract. If cancelled, the association will not be not be liable for cancellation fees or penalties and will only be liable for the value of services provided up to the date of cancellation.

Homeowners' Association -- Prospective Purchaser Disclosure

Under current law, a prospective purchaser of a home in a homeowners association must be given a disclosure summary before the contract for sale is executed. The form of the disclosure is set forth in s. 720.401, F.S. Statements on the form must declare in part that:

- A purchaser will be required to be a member of the homeowners' association;
- There are restrictive covenants;
- The purchaser will have to pay assessments;
- The purchaser may have to pay special assessments;
- Failure to pay assessments could result in a lien; and
- The developer may have the right to amend restrictive covenants without association approval.

[11] See s. 720.304(1), F.S.

[12] An insider contract is a contract between a corporation and another entity that one or more directors have an interest in. For instance, in a homeowners association an insider contract might be where John Smith is a director of a homeowners association that hires John Smith Landscaping Company, owned by that director, to mow the common areas.

This bill amends the disclosure form to further disclose that the developer may only amend the covenants without association approval if the association is still under developer control. This bill also adds two new disclosures:

- That there may be an obligation to pay assessments to a community development district for the purpose of retiring bond obligations used to construct the infrastructure or other improvements.
- The purchaser is jointly and severally liable with the previous owner for all unpaid assessments up to the time of the title transfer.

Homeowners' Association – Dispute Resolution Procedures - In General

Current law at s. 720.311, F.S., requires that certain disputes related to homeowners associations are subject to pre-suit mediation or to arbitration. A party that fails to initiate the mediation procedure, or who fails to participate in the procedure, may not recover attorney's fees in any subsequent litigation regarding the dispute. This bill repeals s. 720.311, F.S., and creates a new Part IV of ch. 720, F.S., entitled "Dispute Resolution."

The general rule of civil litigation is that each party bears his or her own legal fees. Many statutes and contracts contain a fee-shifting provision that requires the losing party to pay the legal fees of the winning party, which acts as a deterrent to frivolous lawsuits and unreasonable demands. It is typical for the covenants of a homeowners association to provide that the prevailing party in litigation to enforce the covenants is entitled to attorney's fees. Current law provides that any party that does not follow the statutory dispute resolution procedures over a dispute may not seek attorney's fees in litigation regarding that dispute. This revised dispute resolution procedures in this bill continue that penalty, that is, a party that fails to refer the case to presuit mediation or arbitration, or a fails to participate, may not seek attorney's fees in litigation over that dispute.

The following sections discuss the changes related to dispute resolution in detail.

Homeowners' Association - Dispute Resolution - Applicability

In general, ch. 720, F.S., only applies to mandatory homeowners associations, that is, an association that has mandatory periodic assessments and the right to impose a lien against a parcel for the failure of a parcel owner to pay an assessment.[13] The current dispute resolution procedures also apply to non-mandatory associations.[14] This bill changes a legislative intent section at s. 720.302(2), F.S., to state an intent for dispute resolution procedures to apply to "deed-restricted communities," which appears to reference non-mandatory associations. However, the provisions in the new Part IV only reference homeowners associations, a defined term that only applies to mandatory associations.

Elections. -- Section 720.311, F.S., requires election disputes to be arbitrated through DBPR, this bill requires elections disputes to be referred to private arbitration. See below for further detail.

Between association and member. -- Section 720.311, F.S., requires disputes between an association and a member regarding use of or changes to the parcel, covenant enforcement, amendments to controlling documents, meetings, or access to association records are subject to presuit mediation. This bill appears to refer the same disputes to presuit mediation or arbitration, but lists specific disputes that are not subject to presuit mediation or arbitration, namely: title disputes, warranties, levy of a fine or assessment, collection, eviction, breach of fiduciary duty by a director, or foreclosure.

[13] Section 720.301(9), F.S.
[14] Section 720.311(2)(e), F.S.

Between members. -- Although a homeowners association is generally expected to take the lead in enforcing the covenants of the association, every member of an association has an independent right to sue his or her neighbor to enforce the covenants. Current law does not require disputes between members of an association to refer the dispute to presuit mediation prior to filing of the action. This bill requires that dispute between members of a homeowners association must follow the same provisions for referral to presuit mediation or arbitration.

Current law provides that cases requiring emergency relief are not required to participate in statutory dispute resolution requirements. This bill provides that, after the court has dealt with the emergency, the court may refer the remainder of the case to the mediation or arbitration requirements.

Homeowners Associations -- Dispute Resolution - Elections

Section 720.303(10)(d), F.S., requires the parties to a dispute regarding a recall election to refer the matter to arbitration by the Department of Business and Professional Regulation. Section 720.306(9), F.S., similarly requires the parties to a dispute regarding a general election to refer the matter to arbitration by the department. Section 720.311(1), F.S., requires the department to charge an initial filing fee of $200 for such arbitrations, and requires the department to charge the parties the actual cost of the arbitration.

This bill requires the parties to any election dispute to refer the matter to private arbitration under new s. 720.507. The bill also amends ss. 720.303(10)(d) or 720.306(9), F.S., to conform.

Homeowners Associations -- Dispute Resolution - Statutes of Limitation

Current law at s. 720.311(1), F.S., provides that the filing of a petition for arbitration or a demand for mediation tolls any applicable statute of limitation. A statute of limitation is a bar to the filing of a lawsuit that occurs after a certain period of time has elapsed since the event that gives rise to the lawsuit. Tolling of a statute of limitations is a day for day extension of the statute of limitations deadline based on the occurrence or nonoccurrence of some event. Current law does not specify when the tolling concludes. This bill provides that the tolling of the statute of limitations ends upon the conclusion of the arbitration or mediation and for 30 days thereafter.

Homeowners Associations -- Dispute Resolution - Notice Before Mediation

Current law at s. 720.311, F.S., allows a party to immediately proceed to the applicable dispute resolution procedure (arbitration or mediation). This bill creates a new s. 720.504 that requires an aggrieved party to first given notice to the other party of the dispute. Notice must be by certified mail. The notice must specifically describe the offense, state the date time and location of the offense, and the text of any provision in the governing documents that applies. The offending party has 10 days to resolve the dispute, after which the aggrieved party may seek arbitration or mediation. A copy of the notice and any responses thereto must be included in any demand for arbitration or mediation. The statute of limitations is not tolled during this 10 day reply period.

Homeowners Associations -- Dispute Resolution - Mediation Required

Current law at s. 720.311, F.S., requires an aggrieved party to serve a statutory offer to participate in presuit mediation. This bill creates a new s. 720.505 that requires the parties to refer the dispute to presuit mediation by use of a similar form entitled "Statutory Notice of Presuit Mediation." Alternatively, this bill also allows the parties to refer the dispute to presuit arbitration.

The form of the Statutory Notice of Pre-suit Mediation is set in new s. 720.505(1), F.S. Service of the form must be by personal service according to ch. 48, F.S., or by certified mail, return receipt

requested. An additional copy of the form must be sent by first-class mail to the responding party's address as it last appears in the association records, or if not available, then as it last appears in the official records of the county property appraiser. The notice informs the offending party that:

- The aggrieved party demands pre-suit mediation.
- Notice of the dispute was previously sent (note that a copy of the previous notice must be attached).
- This notice is required before a lawsuit may be filed.
- The party receiving the notice may opt for arbitration.
- The mediation process will be conducted under specified terms.
- Failure to participate in mediation will result in a bar on collecting attorney's fees should the dispute go to trial.
- The aggrieved party has selected 5 mediators, whose name and rate are stated, and that the party receiving the notice may select one of the five.
- The recipient must reply within 20 days by certified mail.

The form then provides room for the respondent to fill out an Agreement to Mediate, in which the respondent indicates that he or she will participate, the name of the mediator chosen, and three dates within the next 90 days that he or she is available.

The mediator is required to set the mediation within 10 days of notice of selection, and must complete mediation within 90 days unless the parties all agree to an extension.

Homeowners Associations -- Dispute Resolution - Arbitration (not related to election)

Current law does not provide an alternative to the mandatory pre-suit mediation of certain disputes. This bill creates new s. 720.506 that allows the party served with a Statutory Notice of Pre-Suit Mediation to reply by requesting pre-suit arbitration instead.

Homeowners Associations -- Dispute Resolution - Arbitration

Current law requires election disputes to be referred to arbitration through DBPR, and does not provide for other homeowners' association disputes to be referred to arbitration. Current law has little statutory guidance for the arbitration process. This bill requires elections disputes to be referred to private arbitration and allows other disputes to be referred to arbitration. The new arbitration procedures at new s. 720.507 apply to all pre-suit arbitration.

Arbitration is different from mediation in that mediation involves a trained intermediary who guides the parties towards a mutually agreeable settlement, whereas arbitration is a hearing similar to trial in which the parties present evidence and the arbitrator makes a ruling.

A party that elects to pursue pre-suit arbitration must serve the other party a written notice of pre-suit arbitration. The statute creates a specific "Statutory Notice of Presuit Arbitration" at new s. 720.507(1). The notice must be served by personal service according to ch. 48, F.S., or by certified mail, return receipt requested. An additional copy must be sent by first-class mail to the responding party's address as it appears on the official records of the association, or if not available, as it appears on the official records for the county appraiser. The form, similar to the mediation form, notifies the party that:

- Arbitration is requested related to a dispute described in the notice.
- Arbitration is required before the filing of a lawsuit.
- The arbitration will be conducted according to the procedures set forth in the notice.
- The parties may settle the case before arbitration.
- Failure to participate will result in a loss of the party's right to recover attorney's fees should a lawsuit be filed.
- The party has selected 5 arbitrators for the other party to select from.
- A response to the notice is required within 20 days.

The form then provides room for the recipient to fill out an Agreement to Arbitrate, in which the recipient indicates that he or she will participate, the name of the arbitrator chosen, and three dates within the next 90 days that he or she is available.

The arbitrator is required to set the arbitration within 10 days of notice of selection, and must complete arbitration within 90 days unless the parties all agree to an extension.

An arbitrator may issue subpoenas for the attendance of witnesses and the production of documents or things. A final arbitration award must be issued within 30 days of the hearing. If the parties agree to binding arbitration, then the award is final; otherwise, any party may file for a trial de novo within 30 days of the award. A party filing a motion for trial de novo will be assessed the other party's costs and attorney's fees if the trial court award is not more favorable than the arbitration award.

Homeowners Associations -- Dispute Resolution - Procedure for Mediation or Arbitration

Current law has little procedure set forth for the conduct of mediation or arbitration proceedings involving homeowners associations. This bill creates new s. 720.508 to provide that:

- Mediation and arbitration are to be conducted according to ch. 44, F.S., and the Florida Rules of Civil Procedure.
- Mediation confidentiality laws apply.
- Only parties and their attorneys may attend mediation. Other persons may only attend if all parties agree.
- A mediation conference is not a board meeting that must be noticed.
- Settlement agreements are not precedent, but arbitration awards are.
- A person must be a certified circuit court mediator and a member of the Florida Bar in order to qualify as a mediator or arbitrator under Part IV.
- Mediation settlements and arbitration awards may be enforced by the courts.

This bill also creates s. 720.509, F.S., to require that a person who conducts mediation or arbitration of homeowners association disputes must be certified as a circuit court mediator and is a member of the Florida Bar.

This bill also creates s. 720.510, F.S., to provide for enforcement of mediation agreements and arbitration awards through the circuit courts. If a party must resort to court action to enforce either, the party is entitled to costs and attorneys fees.

Swimming Pools

This bill creates an unnumbered section of law to provide that all new residential construction of a condominium, a cooperative, or in a mandatory homeowners association must comply with the provisions of the Virginia Graeme Baker Pool and Spa Safety Act. This federal law requires, in part, that all newly constructed swimming pools utilize construction methods that limit entrapment hazards. In that the law already applies and is in effect, this provision in the bill has no practical effect.

B. SECTION DIRECTORY:

Section 1 amends s. 34.01, F.S., relating to the jurisdiction of the county court.

Section 2 amends s. 468.436, F.S., relating to regulation of community association managers.

Section 3 amends s. 718.103, F.S., relating to the definition of developer applicable to condominium regulatory laws.

Section 4 amends s. 718.111, F.S., relating to condominium associations in general.

Section 5 amends s. 718.112 F.S., relating to the bylaws of a condominium association.

Section 6 amends s. 718.115, F.S., relating to

Section 7 amends s. 718.116, F.S., relating to condominium association assessments.

Section 8 amends s. 718.1265, F.S., relating to condominium association emergency powers.

Section 9 amends s. 718.301, F.S., relating to transfer of control in an association.

Section 10 amends s. 718.303, F.S., relating to the obligations of owners in a condominium association.

Section 11 amends s. 718.501, F.S., relating to regulation of condominium associations, developers and directors by the Department of Business and Professional Regulation.

Section 12 amends s. 718.5012, F.S., relating to the Condominium Ombudsman.

Section 13 creates part VII of ch. 718., F.S., relating to distressed condominium associations.

Section 14 amends s. 720.302, F.S., relating to the purpose, scope and application of ch. 720, F.S., regarding homeowners' associations.

Section 15 amends s. 720.303, F.S., relating to homeowners association powers and duties.

Section 16 amends s. 720.304, F.S., relating to the right of an owner in a homeowners association to fly flags.

Section 17 amends s. 720.305, F.S., relating to obligations of members of a homeowners association, remedies at law or in equity, levy of fines and suspension of use rights.

Section 18 amends s. 720.306, F.S., relating to meetings of members of a homeowners association.

Section 19 amends s. 720.3085, F.S., relating to assessments and liens in homeowners associations.

Section 20 amends s. 720.3095, F.S., relating to management and maintenance agreements by homeowners associations.

Section 21 amends s. 720.3096, F.S., relating to limits on agreements by homeowners associations.

Section 22 repeals s. 720.311, F.S., relating to homeowners association dispute resolution.

Section 23 amends s. 720.401, F.S., relating to notices given to prospective purchasers of a property within a homeowners association.

Section 24 creates ss. 720.501, F.S., 720.502, F.S., 720.503, F.S., 720.504, F.S., 720.505, F.S., 720.506, F.S., 720.507, F.S., 720.508, F.S., 720.509, F.S., and 720.510, F.S., relating to dispute resolution in homeowners associations.

Section 25 requires new construction within an association under ch. 718 (condominiums), 719 (cooperatives), or 720 (homeowners associations), F.S., to comply with the Virginia Graeme Baker Pool and Spa Safety Act.

Section 26 provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The portion of this bill redirecting homeowners association election disputes from DBPR arbitration to private arbitration may decrease annual revenues of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund by $8,464 and decrease General Revenue by $736.[15]

2. Expenditures:

   DBPR estimates that section 5 and sections 10 to 12 of the bill will increase regulatory oversight over condominium associations and will require an additional 6 FTE's. The department estimates the following expenditures, payable from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund:

	2010-2011	2011-2012	2012-2013
6 FTE's	$309,807	$309,807	$309,807
Expenses	$ 39,048	$ 39,048	$ 39,048
HR contract	$ 2,394	$ 2,394	$ 2,394
Expense	$ 23,262		
Total	$374,511	$351,249	$351,249

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[15] $9,200 revenue, minus the 8% service charge to General Revenue. DBPR analysis, October 15, 2009.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under current law, a private individual petitioning DBPR for arbitration of an election dispute in a homeowners association pays a $200 fee to the department, pursuant to s. 720.311(1), F.S. The department is supposed to assess the parties the actual cost to the department for conducting the arbitration, but historically has not enforced this. The bill requires the petitioner and the association to split the cost of a private arbitrator, which will likely cost at least $1,000. It is estimated that this bill will significantly increase the cost to private individuals for election arbitration in homeowners associations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The provisions for hearings related to the suspension of use rights for nonpayment of assessments appear inconsistent. See lines 834-871.

It is unclear how the mediation and arbitration process created in Section 24 would proceed if there is more than one respondent.

The provisions allowing a homeowners association to collect and hold a security deposit from a tenant of a unit owner should perhaps be amended to match the provisions in the landlord tenant act. For instance, the provisions in the bill require the association to return or make a claim against the deposit within 15 days after the tenant moves out, but the similar landlord tenant law first requires the tenant to give notice of moving out. It is unclear under this bill how the association would know that a tenant has vacated the property, especially given that the association has no relationship with the tenant (that is, a landlord typically knows when the lease ends and knows that a tenant may have moved out early if the tenant stops paying rent). See lines 1827-1842 and s. 83.49, F.S.

The bill transfers responsibility for elections disputes in homeowners associations from DBPR to the private sector. To be consistent, the definitions of department and division should be removed at ss. 720.301(5) and 720.301(7), F.S., and references to the division should be removed from s. 720.303(10)(d), F.S. and from s. 720.306(9), F.S. (see line 1942 of bill).

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to residential properties; amending s. 34.01, F.S.; correcting a cross-reference to conform to changes made by the act; amending s. 468.436, F.S.; revising a ground for disciplinary action relating to misconduct or negligence; requiring the Department of Business and Professional Regulation to enter an order permanently revoking the license of a community association manager under certain circumstances; amending s. 718.103, F.S.; revising the definition of the term "developer" to exclude a bulk assignee or bulk buyer; amending s. 718.111, F.S.; providing requirements for an association to borrow funds or commit to a line of credit, including a meeting of the board of administration and prior notice; providing requirements for association access to a unit, including prior notice; providing an exception for emergencies; amending s. 718.112, F.S.; revising notice requirements for board of administration meetings; revising requirements for the reappointment of certain board members; providing an exception to the expiration of the terms of members of certain boards; revising board eligibility requirements; revising notice requirements for board candidates; establishing requirements for newly elected board members; providing requirements for bylaw amendments by a board of administration; amending s. 718.115, F.S.; requiring that certain services obtained pursuant to a bulk contract as provided in the declaration be deemed a common expense;

requiring that such contracts contain certain provisions; authorizing the cancellation of certain contracts; amending s. 718.116, F.S.; authorizing association demands for assessment payments from tenants of delinquent owners during pendency of a foreclosure action of a condominium unit; providing for notice; providing for credits against rent for assessment payments by tenants; providing for eviction proceedings for nonpayment; providing for effect of provisions on rights and duties of the tenant and association; amending s. 718.1265, F.S.; limiting the exercise of specified special powers under a declared state of emergency unless a certain number of units are rendered uninhabitable by the emergency; amending s. 718.301, F.S.; revising conditions under which unit owners other than the developer may elect not less than a majority of the members of the board of administration of an association; amending s. 718.303, F.S.; revising provisions relating to levy of fines; providing for suspension of certain rights of access and voting rights under certain circumstances relating to nonpayment of assessments, fines, or other charges payable to the association; amending s. 718.501, F.S.; providing for jurisdiction of the Division of Florida Condominiums, Timeshares, and Mobile Homes of the department to investigate complaints concerning failure to maintain common elements; prohibiting an officer or director from acting as such for a specified period after having been found to have committed specified violations; providing

for payment of restitution and costs of investigation and prosecution in certain circumstances; amending s. 718.5012, F.S.; providing a responsibility of the ombudsman to prepare and adopt a "Florida Condominium Handbook"; requiring the publishing and updating of the handbook to be done in conjunction with the division; providing the purpose of the handbook; requiring the handbook to be published on the ombudsman's Internet website; creating part VII of ch. 718, F.S., relating to distressed condominium relief; creating s. 718.701, F.S.; providing a short title; creating s. 718.702, F.S.; providing legislative findings and intent; creating s. 718.703, F.S.; defining the terms "bulk assignee" and "bulk buyer"; creating s. 718.704, F.S.; providing for the assignment of developer rights to and the assumption of developer rights by a bulk assignee; specifying liabilities of bulk assignees and bulk buyers; providing exceptions; providing additional responsibilities of bulk assignees and bulk buyers; authorizing certain entities to assign developer rights to a bulk assignee; limiting the number of bulk assignees at any given time; creating s. 718.705, F.S.; providing for the transfer of control of a board of administration; providing effects of such transfer on parcels acquired by a bulk assignee; providing obligations of a bulk assignee upon the transfer of control of a board of administration; requiring that a bulk assignee certify certain information in writing; providing for the resolution of a conflict between

specified provisions of state law; providing that the failure of a bulk assignee or bulk buyer to comply with specified provisions of state law results in the loss of certain protections and exemptions; creating s. 718.706, F.S.; requiring that a bulk assignee or bulk buyer file certain information with the division before offering any units for sale or lease in excess of a specified term; requiring that a copy of such information be provided to a prospective purchaser; requiring that certain contracts and disclosure statements contain specified statements; requiring that a bulk assignee or bulk buyer comply with certain disclosure requirements; prohibiting a bulk assignee from taking certain actions on behalf of an association while the bulk assignee is in control of the board of administration of the association and requiring that such bulk assignee comply with certain requirements; requiring that a bulk assignee or bulk buyer comply with certain requirements regarding certain contracts; providing unit owners with specified protections regarding certain contracts; requiring that a bulk buyer comply with certain requirements regarding the transfer of a unit; creating s. 718.707, F.S.; prohibiting a person from being classified as a bulk assignee or bulk buyer unless condominium parcels were acquired before a specified date; providing for the determination of the date of acquisition of a parcel; creating s. 718.708, F.S.; providing that the assignment of developer rights to a bulk assignee or bulk buyer does not release a developer from certain

liabilities; preserving certain liabilities for certain parties; amending s. 720.302, F.S.; correcting a cross-reference to conform to changes made by the act; establishing legislative intent; amending s. 720.303, F.S.; revising provisions relating to homeowners' association board meetings, inspection and copying of records, reserve accounts of budgets, and recall of directors; prohibiting a salary or compensation for certain association personnel; providing exceptions; providing requirements for the borrowing of funds or committing to a line of credit by the board; providing requirements relating to transfer fees; amending s. 720.304, F.S.; revising requirements with respect to the display of flags; amending s. 720.305, F.S.; authorizing fines assessed against members which exceed a certain amount to become a lien against a parcel; amending s. 720.306, F.S.; providing requirements for secret ballots; requiring newly elected members of a board of directors to make certain certifications in writing to the association; providing for disqualification for failure to make such certifications; requiring an association to retain certifications for a specified time; amending s. 720.3085, F.S.; requiring a tenant in a unit in which the regular assessments are delinquent to pay future regular assessments to the association; requiring notice; providing for eviction by the association; specifying rights of the tenant; creating s. 720.3095, F.S.; providing requirements of maintenance and management

contracts of a homeowners' association; requiring disclosures; providing a penalty; providing exceptions; creating s. 720.3096, F.S.; limiting contracts entered into by a homeowners' association; providing requirements for such contracts; repealing s. 720.311, F.S., relating to a procedure for dispute resolution in homeowners' associations; amending s. 720.401, F.S.; requiring that the disclosure summary to prospective parcel owners include additional provisions; creating part IV of ch. 720, F.S., relating to dispute resolution; creating s. 720.501, F.S.; providing a short title; creating s. 720.502, F.S.; providing legislative findings; creating s. 720.503, F.S.; specifying applicability of provisions for mediation and arbitration of disputes in homeowners' associations; providing exceptions; providing for injunctive relief; providing for the tolling of applicable statutes of limitations; creating s. 720.504, F.S.; requiring that the notice of dispute be delivered before referral to mediation or arbitration; providing notice requirements; creating s. 720.505, F.S.; creating a statutory notice form for referral to mediation; providing delivery requirements; requiring parties to share costs; requiring the selection of a mediator and times to meet; providing penalties for failure to mediate; creating s. 720.506, F.S.; creating an opt-out provision and procedures; creating s. 720.507, F.S.; creating a statutory notice form for referral to arbitration; providing delivery requirements; requiring parties to

share costs; requiring the selection of an arbitrator and times to meet; providing penalties for failure to arbitrate; providing subpoena powers and requirements; providing requirements for and repercussions of subsequent judicial resolution of the dispute; creating s. 720.508, F.S.; providing for rules of procedure; providing for confidentiality; providing applicability to other rules of procedure and provisions of law; specifying that arbitration awards have certain precedential value; creating s. 720.509, F.S.; specifying qualifications for mediators and arbitrators; creating s. 720.510, F.S.; providing for enforcement of mediation agreements and arbitration awards; requiring all new residential construction in a deed-restricted community that requires mandatory membership in the association under specified provisions of Florida law to comply with specified provisions of federal law; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (1) of section 34.01, Florida Statutes, is amended to read:

34.01 Jurisdiction of county court.--

(1) County courts shall have original jurisdiction:

(d) Of disputes occurring in the homeowners' associations as described in <u>part IV of chapter 720</u> ~~s. 720.311(2)(a)~~, which shall be concurrent with jurisdiction of the circuit courts.

Section 2. Paragraph (b) of subsection (2) of section

468.436, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

468.436 Disciplinary proceedings.--

(2) The following acts constitute grounds for which the disciplinary actions in subsection (4) may be taken:

(b)1. Violation of any provision of this part.

2. Violation of any lawful order or rule rendered or adopted by the department or the council.

3. Being convicted of or pleading nolo contendere to a felony in any court in the United States.

4. Obtaining a license or certification or any other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts.

5. Committing acts of ~~gross~~ misconduct or ~~gross~~ negligence in connection with the profession.

6. Contracting, on behalf of an association, with any entity in which the licensee has a financial interest that is not disclosed.

(6) Upon the fifth or later finding that a community association manager is guilty of any of the grounds set forth in subsection (2), or upon the third or later finding that a community association manager is guilty of a specific ground for which the disciplinary actions set forth in subsection (2) may be taken, the department's discretion under subsection (4) shall not apply and the division shall enter an order permanently revoking the license.

Section 3. Subsection (16) of section 718.103, Florida Statutes, is amended to read:

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

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

(a) An owner or lessee of a condominium or cooperative unit who has acquired the unit for his or her own occupancy; ~~, nor does it include~~

(b) A cooperative association which creates a condominium by conversion of an existing residential cooperative after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion; ~~.~~

(c) A bulk assignee or bulk buyer as defined in s. 718.703; or

(d) A state, county, or municipal entity ~~is not a developer for any purposes under this act when it is~~ acting as a lessor and not otherwise named as a developer in the declaration of condominium ~~association~~.

Section 4. Subsections (3) and (5) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.--

(3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT, SUE, AND BE SUED.--

(a) The association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers. For these purposes, the powers of the association include, but are not

limited to, the maintenance, management, and operation of the condominium property.

(b) After control of the association is obtained by unit owners other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all unit owners concerning matters of common interest to most or all unit owners, including, but not limited to, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; representations of the developer pertaining to any existing or proposed commonly used facilities; and protesting ad valorem taxes on commonly used facilities and on units; and may defend actions in eminent domain or bring inverse condemnation actions.

(c) If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. Nothing herein limits any statutory or common-law right of any individual unit owner or class of unit owners to bring any action without participation by the association which may otherwise be available.

(d) The borrowing of funds or committing to a line of credit by the board of administration shall be considered a special assessment, and any meeting of the board of administration to discuss such matters must be noticed as provided in s. 718.112(2)(c). The board may not borrow funds or enter into a line of credit for any purpose unless the specific

use of the funds from the loan or line of credit is set forth in the notice of meeting with the same specificity as required for a special assessment or unless the borrowing or line of credit has received the prior approval of at least two-thirds of the voting interests of the association.

(5) RIGHT OF ACCESS TO UNITS.--The association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit or units. Except in cases of emergency, the association must give the unit owner advance written notice of not less than 24 hours of its intent to access the unit and such access must be by two persons, one of whom must be a member of the board of administration or a manager or employee of the association and one of whom must be an authorized representative of the association. The identity of the authorized representative seeking access to the unit shall be provided to the unit owner prior to entering the unit.

Section 5. Paragraphs (b), (c), (d), and (h) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.--

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

(b) Quorum; voting requirements; proxies.--

1. Unless a lower number is provided in the bylaws, the

percentage of voting interests required to constitute a quorum at a meeting of the members shall be a majority of the voting interests. Unless otherwise provided in this chapter or in the declaration, articles of incorporation, or bylaws, and except as provided in sub-subparagraph ~~subparagraph~~ (d)3.a., decisions shall be made by owners of a majority of the voting interests represented at a meeting at which a quorum is present.

2. Except as specifically otherwise provided herein, after January 1, 1992, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. No voting interest or consent right allocated to a unit owned by the association shall be exercised or considered for any purpose, whether for a quorum, an election, or otherwise. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (f)2.; for votes taken to waive the financial reporting requirements of s. 718.111(13); for votes taken to amend the declaration pursuant to s. 718.110; for votes taken to amend the articles of incorporation or bylaws pursuant to this section; and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), after January 1, 1992, no proxy, limited or general, shall be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding the provisions of this

subparagraph, unit owners may vote in person at unit owner meetings. Nothing contained herein shall limit the use of general proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare condominium association.

3. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy is revocable at any time at the pleasure of the unit owner executing it.

4. A member of the board of administration or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. This agreement or disagreement may not be used as a vote for or against the action taken and may not be used for the purposes of creating a quorum.

5. When any of the board or committee members meet by telephone conference, those board or committee members attending by telephone conference may be counted toward obtaining a quorum and may vote by telephone. A telephone speaker must be used so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person as well as by any unit owners present at a meeting.

(c) Board of administration meetings.--Meetings of the board of administration at which a quorum of the members is present shall be open to all unit owners. Any unit owner may

tape record or videotape meetings of the board of administration. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements. Adequate notice of all meetings, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously on the condominium property at least 48 continuous hours preceding the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board shall at its next regular board meeting or at a special meeting of the board, but not later than 60 days after the receipt of the petition, place the item on the agenda. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. However, written notice of any meeting at which nonemergency special assessments, or at which amendment to rules regarding unit use, will be considered shall be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property not less than 14 days prior to the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. Upon notice to the unit owners, the board shall by duly adopted rule

designate a specific location on the condominium property or association property upon which all notices of board meetings shall be posted. If there is no condominium property or association property upon which notices can be posted, notices of board meetings shall be mailed, delivered, or electronically transmitted at least 14 days before the meeting to the owner of each unit. In lieu of or in addition to the physical posting of notice of any meeting of the board of administration on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Notice of any meeting in which regular or special assessments against unit owners are to be considered for any reason shall specifically state that assessments will be considered and the nature <u>of</u>, <u>the actual</u> ~~estimated~~ cost <u>of</u>, and <u>a</u> description of the purposes for such assessments. Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to the provisions

of this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to the provisions of this section, unless those meetings are exempted from this section by the bylaws of the association. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners is inapplicable to meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, when the meeting is held for the purpose of seeking or rendering legal advice.

(d) Unit owner meetings.--

1. There shall be an annual meeting of the unit owners held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting shall be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term shall be filled by electing a new board member, and the election shall be by secret ballot; however, if the number of vacancies equals ~~or exceeds~~ the number of candidates, no election is required. Except in an association governing a timeshare condominium, the terms of all members of the board shall expire at the annual meeting and such board members may stand for reelection unless otherwise permitted by the bylaws. In the event that the bylaws permit staggered terms of no more than 2 years and upon approval of a majority of the total voting

interests, the association board members may serve 2-year staggered terms. If the number ~~no person is interested in or demonstrates an intention to run for the position~~ of ~~a~~ board members ~~member~~ whose terms have ~~term has~~ expired according to the provisions of this subparagraph exceeds the number of eligible association members showing interest in or demonstrating an intention to run for the vacant positions, each ~~such~~ board member whose term has expired shall become eligible for reappointment ~~be automatically reappointed~~ to the board of administration and need not stand for reelection. In a condominium association of more than 10 units, or in a condominium association that does not include timeshare units, coowners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit and are not co-occupants of a unit or unless there is an insufficient number of eligible association members showing interest in or demonstrating an intention to run for the vacant positions on the board. Any unit owner desiring to be a candidate for board membership must ~~shall~~ comply with sub-subparagraph ~~subparagraph~~ 3.a. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any fee, fine, or special or regular assessment as provided in paragraph (n), is not eligible for board membership. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction that would be considered a felony if committed in this state, is not eligible for board membership

unless such felon's civil rights have been restored for a period of no less than 5 years as of the date on which such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a member of the board is ineligible for board membership due to having been convicted of a felony.

2. The bylaws shall provide the method of calling meetings of unit owners, including annual meetings. Written notice, which notice must include an agenda, shall be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days prior to the annual meeting and shall be posted in a conspicuous place on the condominium property at least 14 continuous days preceding the annual meeting. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the condominium property or association property upon which all notices of unit owner meetings shall be posted; however, if there is no condominium property or association property upon which notices can be posted, this requirement does not apply. In lieu of or in addition to the physical posting of notice of any meeting of the unit owners on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this

section. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice shall be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes shall be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association shall provide notice, for meetings and all other purposes, to that one address which the developer initially identifies for that purpose and thereafter as one or more of the owners of the unit shall so advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, shall provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered, in accordance with this provision.

3.a. The members of the board shall be elected by written ballot or voting machine. Proxies shall in no event be used in electing the board, either in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. Not less than 60 days

before a scheduled election, the association shall mail, deliver, or electronically transmit, whether by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election ~~along with a certification form provided by the division attesting that he or she has read and understands, to the best of his or her ability, the governing documents of the association and the provisions of this chapter and any applicable rules~~. Any unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association not less than 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 2., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote therein, together with a ballot which shall list all candidates. Upon request of a candidate, ~~the association shall include~~ an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate not less than 35 days before the election, shall ~~along with the signed certification form provided for in this subparagraph, to~~ be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the

information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with the provisions contained herein, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of those ballots cast. There shall be no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election of members of the board. No unit owner shall permit any other person to vote his or her ballot, and any such ballots improperly cast shall be deemed invalid, provided any unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain assistance in casting the ballot. The regular election shall occur on the date of the annual meeting. The provisions of this sub-subparagraph ~~subparagraph~~ shall not apply to timeshare condominium associations. Notwithstanding the provisions of this sub-subparagraph ~~subparagraph~~, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected to the board, each newly elected director shall certify in writing to the secretary of the association that he or she has read the association's declarations of covenants and restrictions, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully

discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, the newly elected director may submit a certificate of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider. Failure to timely file the written certification or educational certificate automatically disqualifies the director from service on the board. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election. Failure to have such written certification or educational certificate on file does not affect the validity of any appropriate action.

4. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), shall be made at a duly noticed meeting of unit owners and shall be subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any statute that provides for such action.

5. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any statute. If authorized by the bylaws, notice of meetings of the board of administration, unit owner meetings, except unit owner meetings

called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission.

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

7. Any unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

8. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of sub-subparagraph ~~subparagraph~~ 3.a. unless the association governs 10 units or fewer ~~less~~ and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

Notwithstanding subparagraph ~~subparagraphs~~ (b)2. and sub-subparagraph (d)3.a., an association of 10 or fewer units may, by the affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which vote may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(h) Amendment of bylaws.--

1. The method by which the bylaws may be amended consistent with the provisions of this chapter shall be stated. If the bylaws fail to provide a method of amendment, the bylaws may be amended if the amendment is approved by the owners of not less than two-thirds of the voting interests.

2. No bylaw shall be revised or amended by reference to its title or number only. Proposals to amend existing bylaws shall contain the full text of the bylaws to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of bylaw. See bylaw _____ for present text."

3. Nonmaterial errors or omissions in the bylaw process will not invalidate an otherwise properly promulgated amendment.

4. If the bylaws provide for amendment by the board of administration, no bylaw may be amended unless it is heard and noticed at two consecutive meetings of the board of administration that are at least 1 week apart.

Section 6. Paragraph (d) of subsection (1) of section 718.115, Florida Statutes, is amended to read:

718.115 Common expenses and common surplus.--

(1)

(d) If so provided in the declaration, the cost of communications services as defined in chapter 202, information services, or Internet services ~~a master antenna television system or duly franchised cable television service~~ obtained pursuant to a bulk contract shall be deemed a common expense. If the declaration does not provide for the cost of communications services as defined in chapter 202, information services, or Internet services ~~a master antenna television system or duly franchised cable television service~~ obtained under a bulk contract as a common expense, the board may enter into such a contract, and the cost of the service will be a common expense but allocated on a per-unit basis rather than a percentage basis if the declaration provides for other than an equal sharing of common expenses, and any contract entered into before July 1, 1998, in which the cost of the service is not equally divided among all unit owners, may be changed by vote of a majority of the voting interests present at a regular or special meeting of the association, to allocate the cost equally among all units. The contract shall be for a term of not less than 2 years.

1. Any contract made by the board after the effective date

hereof for communications services as defined in chapter 202, information services, or Internet services ~~a community antenna system or duly franchised cable television service~~ may be canceled by a majority of the voting interests present at the next regular or special meeting of the association. Any member may make a motion to cancel the ~~said~~ contract, but if no motion is made or if such motion fails to obtain the required majority at the next regular or special meeting, whichever occurs ~~is~~ sooner, following the making of the contract, ~~then~~ such contract shall be deemed ratified for the term therein expressed.

2. Any such contract shall provide, and shall be deemed to provide if not expressly set forth, that any hearing-impaired or legally blind unit owner who does not occupy the unit with a non-hearing-impaired or sighted person, or any unit owner receiving supplemental security income under Title XVI of the Social Security Act or food stamps as administered by the Department of Children and Family Services pursuant to s. 414.31, may discontinue the cable or video service without incurring disconnect fees, penalties, or subsequent service charges, and, as to such units, the owners shall not be required to pay any common expenses charge related to such service. If fewer ~~less~~ than all members of an association share the expenses of cable or video service ~~television~~, the expense shall be shared equally by all participating unit owners. The association may use the provisions of s. 718.116 to enforce payment of the shares of such costs by the unit owners receiving cable or video service ~~television~~.

Section 7. Subsection (11) is added to section 718.116,

Florida Statutes, to read:

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

(11) During the pendency of any foreclosure action of a condominium unit, if the unit is occupied by a tenant and the unit owner is delinquent in the payment of regular assessments, the association may demand that the tenant pay to the association the future regular assessments related to the condominium unit. The demand shall be continuing in nature, and upon demand the tenant shall continue to pay the regular assessments to the association until the association releases the tenant or the tenant discontinues tenancy in the unit. The association shall mail written notice to the unit owner of the association's demand that the tenant pay regular assessments to the association. The tenant shall not be liable for increases in the amount of the regular assessment due unless the tenant was reasonably notified of the increase prior to the day that the rent is due. The tenant shall be given a credit against rents due to the unit owner in the amount of assessments paid to the association. The association shall, upon request, provide the tenant with written receipts for payments made. The association may issue notices under s. 83.56 and may sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 should the tenant fail to pay an assessment. However, the association shall not otherwise be considered a landlord under chapter 83 and shall specifically not have any duty under s. 83.51. The tenant shall not, by virtue of payment of assessments, have any of the rights of a

unit owner to vote in any election or to examine the books and records of the association. A court may supersede the effect of this subsection by appointing a receiver.

Section 8. Subsection (2) of section 718.1265, Florida Statutes, is amended to read:

718.1265 Association emergency powers.--

(2) The special powers authorized under subsection (1) shall be limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and the unit owners' family members, tenants, guests, agents, or invitees and shall be reasonably necessary to mitigate further damage and make emergency repairs. Additionally, unless 20 percent or more of the units are made uninhabitable by the emergency, the special powers authorized under subsection (1) may only be exercised during the term of the Governor's executive order or proclamation declaring the state of emergency in the locale in which the condominium is located.

Section 9. Subsection (1) of section 718.301, Florida Statutes, is amended to read:

718.301 Transfer of association control; claims of defect by association.--

(1) When unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to elect no less than one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled

to elect not less than a majority of the members of the board of administration of an association:

(a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(b) Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(c) When all the units that will be operated ultimately by the association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business;

(d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business;

(e) When the developer files a petition seeking protection in bankruptcy;

(f) When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members; or

(g) Seven years after recordation of the declaration of condominium; or, in the case of an association which may ultimately operate more than one condominium, 7 years after recordation of the declaration for the first condominium it operates; or, in the case of an association operating a phase

condominium created pursuant to s. 718.403, 7 years after recordation of the declaration creating the initial phase,

whichever occurs first. The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association. Following the time the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting the majority members of the board of administration.

Section 10. Subsection (3) of section 718.303, Florida Statutes, is amended, and subsections (4) and (5) are added to that section, to read:

718.303 Obligations of owners; waiver; <u>suspension of access or voting rights or</u> levy of fine against unit by association.--

(3) If <u>a unit owner is delinquent for more than 90 days in the payment of regular or special assessments or</u> the declaration or bylaws so provide, the association may <u>suspend, for a reasonable time, the right of a unit owner or a unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property. This subsection does not apply to limited common elements intended to be used only by</u>

that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators. The association may also levy reasonable fines ~~against a unit~~ for the failure of the owner of the unit, or its occupant, licensee, or invitee, to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. No fine will become a lien against a unit. A ~~No~~ fine may not exceed $100 per violation. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed $1,000. A ~~No~~ fine may not be levied and a suspension may not be imposed unless the association first gives ~~except after giving~~ reasonable notice and opportunity for a hearing to the unit owner and, if applicable, its occupant, licensee, or invitee. The hearing must be held before a committee of other unit owners who are neither board members nor persons residing in a board member's household. If the committee does not agree with the fine or suspension, the fine or suspension may not be levied or imposed. ~~The provisions of this subsection do not apply to unoccupied units.~~

(4) The notice and hearing requirements of subsection (3) do not apply to the imposition of suspensions or fines against a unit owner or a unit's occupant, licensee, or invitee because of the failure to pay any amounts due the association. If such a fine or suspension is imposed, the association must levy the fine or impose a reasonable suspension at a properly noticed board meeting, and after the imposition of such fine or

suspension, the association must notify the unit owner and, if applicable, the unit's occupant, licensee, or invitee by mail or hand delivery.

(5) If the declaration or bylaws so provide, an association may also suspend the voting rights of a member due to nonpayment of assessments, fines, or other charges payable to the association which are delinquent in excess of 90 days.

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

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.--

(1) The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation, referred to as the "division" in this part, has the power to enforce and ensure compliance with the provisions of this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with the provisions of this chapter with respect to associations that are still under developer control and complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division shall only have jurisdiction to investigate complaints related to financial issues, failure to maintain common elements, elections, and unit owner access to association records pursuant to s. 718.111(12).

(a)1. The division may make necessary public or private

investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms hereunder.

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

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

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a

subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, association, officer, or member of the board of administration, or its assignees or agents, as follows:

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

2. The division may issue an order requiring the developer, association, developer-designated officer, or developer-designated member of the board of administration, developer-designated assignees or agents, community association manager, or community association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter. If the division finds that a developer, association, officer, or member of the board of administration, or its assignees or agents, is violating or is about to violate any provision of this chapter, any rule adopted or order issued by the division, or any written agreement

entered into with the division, and presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer fails to pay any restitution determined by the division to be owed, plus any accrued interest at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division shall bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer to which the restitution relates until payment of restitution is made.

4. The division may petition the court for the appointment of a receiver or conservator. If appointed, the receiver or conservator may take action to implement the court order to ensure the performance of the order and to remedy any breach thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related

records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution whereby the defendant in an action brought pursuant to subparagraph 4. shall be ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. Such restitution shall, at the option of the court, be payable to the conservator or receiver appointed pursuant to subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer or association, or its assignee or agent, for any violation of this chapter or a rule adopted under this chapter. The division may impose a civil penalty individually against any officer or board member who willfully and knowingly violates a provision of this chapter, adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, prior to

initiating formal agency action under chapter 120, shall afford the officer or board member an opportunity to voluntarily comply with this chapter, a rule adopted under this chapter, or a final order of the division. An officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed $5,000. By January 1, 1998, the division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be

deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order will not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

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

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show

cause under paragraph (r). The civil penalty shall be at least $500 but no more than $5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney's fees and, if the division prevails, may also award reasonable costs of investigation.

9. Notwithstanding subparagraph 6., when the division finds that an officer or director has intentionally falsified association records with the intent to conceal material facts from the division, the board, or unit owners, the division shall prohibit the officer or director from acting as an officer or director of any condominium, cooperative, or homeowners' association for at least 1 year.

10. When the division finds that any person has derived an improper personal benefit from a condominium association, the division shall order the person to pay restitution to the association and shall order the person to pay to the division the costs of investigation and prosecution.

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

(f) The division has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer during the period where the developer controls the association when the division is considering the issuance of a declaratory statement with

respect to the declaration of condominium or any related document governing in such condominium community.

(h) The division shall furnish each association which pays the fees required by paragraph (2)(a) a copy of this act, subsequent changes to this act on an annual basis, an amended version of this act as it becomes available from the Secretary of State's office on a biennial basis, and the rules adopted thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, in the division's discretion, include web-based electronic media, and live training and seminars in various locations throughout the state. The division shall have the authority to review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and shall make such list available to board members and unit owners in a reasonable and cost-effective manner.

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

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other

participant in arbitration proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which factors must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements imposed by rules adopted by the division.

(m) When a complaint is made, the division shall conduct its inquiry with due regard to the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and shall, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists

to believe that a violation of this chapter or a rule of the division has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57.

(n) Condominium association directors, officers, and employees; condominium developers; community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation pursuant to this section. The division shall refer to local law enforcement authorities any person whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department's investigation.

(o) The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or

2. Accept grants-in-aid from any source.

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

(q) The division shall consider notice to a developer to be complete when it is delivered to the developer's address

currently on file with the division.

(r) In addition to its enforcement authority, the division may issue a notice to show cause, which shall provide for a hearing, upon written request, in accordance with chapter 120.

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

Section 12. Subsection (4) of section 718.5012, Florida Statutes, is amended to read:

718.5012 Ombudsman; powers and duties.--The ombudsman shall have the powers that are necessary to carry out the duties of his or her office, including the following specific powers:

(4) To act as liaison between the division, unit owners, boards of directors, board members, community association managers, and other affected parties. The ombudsman shall develop policies and procedures to assist unit owners, boards of

directors, board members, community association managers, and other affected parties to understand their rights and responsibilities as set forth in this chapter and the condominium documents governing their respective association. The ombudsman shall coordinate and assist in the preparation and adoption of educational and reference material, and shall endeavor to coordinate with private or volunteer providers of these services, so that the availability of these resources is made known to the largest possible audience. In conjunction with the division, included in the preparation and adoption of educational and reference materials shall be the publishing and updating of a "Florida Condominium Handbook" to facilitate understanding of this chapter, the contents of which are stated in a clear, conspicuous, and easily understandable manner. The handbook shall be made publicly available on the ombudsman's Internet website.

Section 13. Part VII of chapter 718, Florida Statutes, consisting of sections 718.701, 718.702, 718.703, 718.704, 718.705, 718.706, 718.707, and 718.708, is created to read:

PART VII

DISTRESSED CONDOMINIUM RELIEF

718.701 Short title.--This part may be cited as the "Distressed Condominium Relief Act."

718.702 Legislative intent.--

(1) The Legislature acknowledges the massive downturn in the condominium market which has transpired throughout the state and the impact of such downturn on developers, lenders, unit owners, and condominium associations. Numerous condominium

projects have either failed or are in the process of failing, whereby the condominium has a small percentage of third-party unit owners as compared to the unsold inventory of units. As a result of the inability to find purchasers for this inventory of units, which results in part from the devaluing of real estate in this state, developers are unable to satisfy the requirements of their lenders, leading to defaults on mortgages. Consequently, lenders are faced with the task of finding a solution to the problem in order to be paid for their investments.

(2) The Legislature recognizes that all of the factors listed in this section lead to condominiums becoming distressed, resulting in detriment to the unit owners and the condominium association on account of the resulting shortage of assessment moneys available to support the financial requirements for proper maintenance of the condominium. Such shortage and the resulting lack of proper maintenance further erode property values. The Legislature finds that individuals and entities within Florida and in other states have expressed interest in purchasing unsold inventory in one or more condominium projects, but are reticent to do so because of accompanying liabilities inherited from the original developer, which are by definition imputed to the successor purchaser, including a foreclosing mortgagee. This results in the potential purchaser having unknown and unquantifiable risks, and potential successor purchasers are unwilling to accept such risks. The result is that condominium projects stagnate, leaving all parties involved at an impasse without the ability to find a solution.

(3) The Legislature finds and 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 distressed condominiums, and that there is a need for relief from certain provisions of the Florida Condominium Act geared toward enabling economic opportunities within these condominiums for successor purchasers, including foreclosing mortgagees. Such relief would benefit existing unit owners and condominium associations. The Legislature further finds and declares that this situation cannot be open-ended without potentially prejudicing the rights of unit owners and condominium associations, and thereby declares that the provisions of this part shall be used by purchasers of condominium inventory for a specific and defined period.

718.703 Definitions.--As used in this part, the term:

(1) "Bulk assignee" means a person who:

(a) Acquires more than seven condominium parcels as set forth in s. 718.707; and

(b) Receives an assignment of some or all of the rights of the developer as are set forth in the declaration of condominium or in this chapter by a written instrument recorded as an exhibit to the deed or as a separate instrument in the public records of the county in which the condominium is located.

(2) "Bulk buyer" means a person who acquires more than seven condominium parcels as set forth in s. 718.707 but who does not receive an assignment of any developer rights other than the right to conduct sales, leasing, and marketing activities within the condominium.

718.704 Assignment of developer rights to and assumption of developer rights by bulk assignee; bulk buyer.--

(1) A bulk assignee shall be deemed to have assumed and is liable for all duties and responsibilities of the developer under the declaration and this chapter, except:

(a) Warranties of the developer under s. 718.203(1) or s. 718.618, except for design, construction, development, or repair work performed by or on behalf of such bulk assignee.

(b) The obligation to:

1. Fund converter reserves under s. 718.618 for a unit which was not acquired by the bulk assignee; or

2. Provide converter warranties on any portion of the condominium property except as may be expressly provided by the bulk assignee in the contract for purchase and sale executed with a purchaser and pertaining to any design, construction, development, or repair work performed by or on behalf of the bulk assignee.

(c) The requirement to provide the association with a cumulative audit of the association's finances from the date of formation of the condominium association as required by s. 718.301. However, the bulk assignee shall provide an audit for the period for which the bulk assignee elects a majority of the members of the board of administration.

(d) Any liability arising out of or in connection with actions taken by the board of administration or the developer-appointed directors before the bulk assignee elects a majority of the members of the board of administration.

(e) Any liability for or arising out of the developer's

failure to fund previous assessments or to resolve budgetary deficits in relation to a developer's right to guarantee assessments, except as otherwise provided in subsection (2).

Further, the bulk assignee is responsible for delivering documents and materials in accordance with s. 718.705(3). A bulk assignee may expressly assume some or all of the obligations of the developer described in paragraphs (a)-(e).

(2) A bulk assignee receiving the assignment of the rights of the developer to guarantee the level of assessments and fund budgetary deficits pursuant to s. 718.116 shall be deemed to have assumed and is liable for all obligations of the developer with respect to such guarantee, including any applicable funding of reserves to the extent required by law, for as long as the guarantee remains in effect. A bulk assignee not receiving an assignment of the right of the developer to guarantee the level of assessments and fund budgetary deficits pursuant to s. 718.116 or a bulk buyer is not deemed to have assumed and is not liable for the obligations of the developer with respect to such guarantee, but is responsible for payment of assessments in the same manner as all other owners of condominium parcels.

(3) A bulk buyer is liable for the duties and responsibilities of the developer under the declaration and this chapter only to the extent provided in this part, together with any other duties or responsibilities of the developer expressly assumed in writing by the bulk buyer.

(4) An acquirer of condominium parcels is not considered a bulk assignee or a bulk buyer if the transfer to such acquirer

was made with the intent to hinder, delay, or defraud any purchaser, unit owner, or the association, or if the acquirer is a person who would constitute an insider under s. 726.102(7).

(5) An assignment of developer rights to a bulk assignee may be made by the developer, a previous bulk assignee, or a court of competent jurisdiction acting on behalf of the developer or the previous bulk assignee. At any particular time, there may be no more than one bulk assignee within a condominium, but there may be more than one bulk buyer. If more than one acquirer of condominium parcels receives an assignment of developer rights from the same person, the bulk assignee is the acquirer whose instrument of assignment is recorded first in applicable public records.

718.705 Board of administration; transfer of control.--

(1) For purposes of determining the timing for transfer of control of the board of administration of the association to unit owners other than the developer under s. 718.301(1)(a) or (b), if a bulk assignee is entitled to elect a majority of the members of the board, a condominium parcel acquired by the bulk assignee shall not be deemed to be conveyed to a purchaser, or to be owned by an owner other than the developer, until such condominium parcel is conveyed to an owner who is not a bulk assignee.

(2) Unless control of the board of administration of the association has already been relinquished pursuant to s. 718.301(1), the bulk assignee is obligated to relinquish control of the association in accordance with s. 718.301 and this part.

(3) When a bulk assignee relinquishes control of the board

of administration as set forth in s. 718.301, the bulk assignee shall deliver all of those items required by s. 718.301(4). However, the bulk assignee is not required to deliver items and documents not in the possession of the bulk assignee during the period during which the bulk assignee was the owner of condominium parcels. In conjunction with the acquisition of condominium parcels, a bulk assignee shall undertake a good faith effort to obtain the documents and materials required to be provided to the association pursuant to s. 718.301(4). To the extent the bulk assignee is not able to obtain all of such documents and materials, the bulk assignee shall certify in writing to the association the names or descriptions of the documents and materials that were not obtainable by the bulk assignee. Delivery of the certificate relieves the bulk assignee of responsibility for the delivery of the documents and materials referenced in the certificate as otherwise required under ss. 718.112 and 718.301 and this part. The responsibility of the bulk assignee for the audit required by s. 718.301(4) shall commence as of the date on which the bulk assignee elected a majority of the members of the board of administration.

(4) If a conflict arises between the provisions or application of this section and s. 718.301, this section shall prevail.

(5) Failure of a bulk assignee or bulk buyer to comply with all the requirements contained in this part shall result in the loss of any and all protections or exemptions provided under this part.

718.706 Specific provisions pertaining to offering of

units by a bulk assignee or bulk buyer.--

(1) Before offering any units for sale or for lease for a term exceeding 5 years, a bulk assignee or bulk buyer must file the following documents with the division and provide such documents to a prospective purchaser:

(a) An updated prospectus or offering circular, or a supplement to the prospectus or offering circular, filed by the creating developer prepared in accordance with s. 718.504, which shall include the form of contract for purchase and sale in compliance with s. 718.503(2).

(b) An updated Frequently Asked Questions and Answers sheet.

(c) The executed escrow agreement if required under s. 718.202.

(d) The financial information required by s. 718.111(13). However, if a financial information report does not exist for the fiscal year before acquisition of title by the bulk assignee or bulk buyer, or accounting records cannot be obtained in good faith by the bulk assignee or bulk buyer which would permit preparation of the required financial information report, the bulk assignee or bulk buyer is excused from the requirement of this paragraph. However, the bulk assignee or bulk buyer must include in the purchase contract the following statement in conspicuous type:

THE FINANCIAL INFORMATION REPORT REQUIRED UNDER SECTION 718.111(13), FLORIDA STATUTES, FOR THE IMMEDIATELY PRECEDING FISCAL YEAR OF THE ASSOCIATION

IS NOT AVAILABLE OR CANNOT BE CREATED BY THE SELLER AS A RESULT OF INSUFFICIENT ACCOUNTING RECORDS OF THE ASSOCIATION.

(2) Before offering any units for sale or for lease for a term exceeding 5 years, a bulk assignee must file with the division and provide to a prospective purchaser a disclosure statement that must include, but is not limited to:

(a) A description to the purchaser of any rights of the developer which have been assigned to the bulk assignee.

(b) The following statement in conspicuous type:

SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE DEVELOPER UNDER SECTION 718.203(1) OR SECTION 718.618, FLORIDA STATUTES, AS APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF OF SELLER.

(c) If the condominium is a conversion subject to part VI, the following statement in conspicuous type:

SELLER HAS NO OBLIGATION TO FUND CONVERTER RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER SECTION 718.618, FLORIDA STATUTES, ON ANY PORTION OF THE CONDOMINIUM PROPERTY EXCEPT AS MAY BE EXPRESSLY REQUIRED OF THE SELLER IN THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO ANY DESIGN, CONSTRUCTION, DEVELOPMENT,

OR REPAIR WORK PERFORMED BY OR ON BEHALF OF THE SELLER.

(3) In addition to the requirements set forth in subsection (1), a bulk assignee or bulk buyer must comply with the nondeveloper disclosure requirements set forth in s. 718.503(2) before offering any units for sale or for lease for a term exceeding 5 years.

(4) A bulk assignee, while in control of the board of administration of the association, may not authorize, on behalf of the association:

(a) The waiver of reserves or the reduction of funding of the reserves in accordance with s. 718.112(2)(f)2., unless approved by a majority of the voting interests not controlled by the developer, bulk assignee, or bulk buyer; or

(b) The use of reserve expenditures for other purposes in accordance with s. 718.112(2)(f)3., unless approved by a majority of the voting interests not controlled by the developer, bulk assignee, or bulk buyer.

(5) A bulk assignee, while in control of the board of administration of the association, must comply with the requirements imposed upon developers to transfer control of the association to the unit owners in accordance with s. 718.301.

(6) A bulk assignee or bulk buyer must comply with all the requirements of s. 718.302 regarding any contracts entered into by the association during the period the bulk assignee or bulk buyer maintains control of the board of administration. Unit owners shall be afforded all the protections contained in s.

718.302 regarding agreements entered into by the association before unit owners other than the developer, bulk assignee, or bulk buyer elected a majority of the board of administration.

(7) A bulk buyer must comply with the requirements contained in the declaration regarding any transfer of a unit, including sales, leases, and subleases. A bulk buyer is not entitled to any exemptions afforded a developer or successor developer under this chapter regarding any transfer of a unit, including sales, leases, or subleases.

718.707 Time limitation for classification as bulk assignee or bulk buyer.--A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired before July 1, 2012. The date of such acquisition shall be determined by the date of recording of a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located or by the date of issuance of a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

718.708 Liability of developers and others.--An assignment of developer rights to a bulk assignee or bulk buyer does not release the developer from any liabilities under the declaration or this chapter. This part does not limit the liability of the developer for claims brought by unit owners, bulk assignees, or bulk buyers for violations of this chapter by the developer, unless specifically excluded in this part. Nothing contained within this part waives, releases, compromises, or limits the liability of contractors, subcontractors, materialmen,

manufacturers, architects, engineers, or any participant in the design or construction of a condominium for any claim brought by an association, unit owners, bulk assignees, or bulk buyers arising from the design of the condominium, construction defects, misrepresentations associated with condominium property, or violations of this chapter, unless specifically excluded in this part.

Section 14. Subsection (2) of section 720.302, Florida Statutes, is amended to read:

720.302 Purposes, scope, and application.--

(2) The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with part IV of this chapter ~~s. 720.311~~, the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of ~~election and recall disputes and presuit mediation of other~~ disputes involving covenant enforcement in homeowners' associations and deed-restricted communities using the procedures provided in part IV of ~~and authorizes the department to hear, administer, and determine these disputes as more fully set forth in~~ this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof as well as deed-restricted communities before the effective date of this act and that part IV of this chapter is ~~ss. 720.301-720.407 are~~ not intended to

impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

Section 15. Paragraph (b) of subsection (2), paragraphs (a) and (c) of subsection (5), paragraphs (b), (c), (d), (f), and (g) of subsection (6), and paragraphs (c) and (d) of subsection (10) of section 720.303, Florida Statutes, are amended, and subsections (12), (13), and (14) are added to that section, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls; prohibited compensation; borrowing; transfer fees.--

(2) BOARD MEETINGS.--

(b) Members have the right to attend all meetings of the board and to speak on any matter placed on the agenda by petition of the voting interests for at least 3 minutes. The association may adopt written reasonable rules expanding the right of members to speak and governing the frequency, duration, and other manner of member statements, which rules must be consistent with this paragraph and may include a sign-up sheet for members wishing to speak. Notwithstanding any other law, ~~the requirement that board meetings and committee meetings be open to the members is inapplicable to~~ meetings between the board or a committee and the association's attorney to discuss proposed or pending litigation~~,~~ or ~~with respect to~~ meetings of the board held for the purpose of discussing personnel matters are not required to be open to the members.

(5) INSPECTION AND COPYING OF RECORDS.--The official records shall be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within 10 business days after receipt of a written request for access. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages.

(a) The failure of an association to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this subsection.

(c) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require ~~impose a requirement that~~ a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The association may charge up to 50 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are

kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside vendor or association management company personnel and may charge the actual cost of copying, including any reasonable costs involving personnel fees and charges at an hourly rate for employee time to cover administrative costs to the association. The association shall maintain an adequate number of copies of the recorded governing documents~~,~~ to ensure their availability to members and prospective members. Notwithstanding the provisions of this paragraph, the following records are ~~shall~~ not ~~be~~ accessible to members or parcel owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including, but not limited to, any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or ~~adversarial~~ administrative proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a parcel.

3. Disciplinary, health, insurance, and personnel records of the association's employees.

4. Medical records of parcel owners or community residents.

(6) BUDGETS.--

(b) In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the association is responsible. If reserve accounts are not established pursuant to paragraph (d), funding of such reserves shall be limited to the extent that the governing documents ~~do not~~ limit increases in assessments, including reserves. If the budget of the association includes reserve accounts established pursuant to paragraph (d), such reserves shall be determined, maintained, and waived in the manner provided in this subsection. Once an association provides for reserve accounts pursuant to paragraph (d) ~~in the budget~~, the association shall thereafter determine, maintain, and waive reserves in compliance with this subsection. This section does not preclude the termination of a reserve account established pursuant to this paragraph upon approval of a majority of the voting interests of the association. Upon such approval, the terminating reserve account shall be removed from the budget.

(c)1. If the budget of the association does not provide for reserve accounts pursuant to paragraph (d) ~~governed by this subsection~~ and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided, each financial report for the preceding fiscal year required under ~~by~~ subsection (7) shall contain the following statement in conspicuous type:

THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF ~~NOT LESS THAN~~ A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.

2. If the budget of the association does provide for funding accounts for deferred expenditures, including, but not limited to, funds for capital expenditures and deferred maintenance, but such accounts are not created or established pursuant to paragraph (d), each financial report for the preceding fiscal year required under subsection (7) must also contain the following statement in conspicuous type:

THE BUDGET OF THE ASSOCIATION DOES PROVIDE FOR LIMITED VOLUNTARY DEFERRED EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6), FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE RESTRICTIONS ON USE OF SUCH FUNDS SET

FORTH IN THAT STATUTE, NOR ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

(d) An association shall be deemed to have provided for reserve accounts if ~~when~~ reserve accounts have been initially established by the developer or if ~~when~~ the membership of the association affirmatively elects to provide for reserves. If reserve accounts are not initially provided for by the developer, the membership of the association may elect to do so upon the affirmative approval of ~~not less than~~ a majority of the total voting interests of the association. Such approval may be obtained ~~attained~~ by vote of the members at a duly called meeting of the membership or by the ~~upon a~~ written consent of ~~executed by not less than~~ a majority of the total voting interests in the community. The approval action of the membership shall state that reserve accounts shall be provided for in the budget and shall designate the components for which the reserve accounts are to be established. Upon approval by the membership, the board of directors shall include ~~provide for~~ the required reserve accounts ~~for inclusion~~ in the budget in the next fiscal year following the approval and ~~in~~ each year thereafter. Once established as provided in this subsection, the reserve accounts shall be funded or maintained or shall have their funding waived in the manner provided in paragraph (f).

(f) After one or more ~~Once a reserve account or~~ reserve accounts are established, the membership of the association, upon a majority vote at a meeting at which a quorum is present, may provide for no reserves or less reserves than required by

this section. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not present, the reserves as included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves. Any vote taken pursuant to this subsection to waive or reduce reserves is ~~shall be~~ applicable only to one budget year.

(g) Funding formulas for reserves authorized by this section shall be based on either a separate analysis of each of the required assets or a pooled analysis of two or more of the required assets.

1. If the association maintains separate reserve accounts for each of the required assets, the amount of the contribution to each reserve account is ~~shall be~~ the sum of the following two calculations:

a. The total amount necessary, if any, to bring a negative component balance to zero.

b. The total estimated deferred maintenance expense or estimated replacement cost of the reserve component less the estimated balance of the reserve component as of the beginning of the period ~~for which~~ the budget will be in effect. The remainder, if greater than zero, shall be divided by the estimated remaining useful life of the component.

The formula may be adjusted each year for changes in estimates and deferred maintenance performed during the year and may

include factors such as inflation and earnings on invested funds.

2. If the association maintains a pooled account of two or more of the required reserve assets, the amount of the contribution to the pooled reserve account as disclosed on the proposed budget may ~~shall~~ not be less than that required to ensure that the balance on hand at the beginning of the period ~~for which~~ the budget will go into effect plus the projected annual cash inflows over the remaining estimated useful life of all of the assets that make up the reserve pool are equal to or greater than the projected annual cash outflows over the remaining estimated useful lives of all ~~of~~ the assets that make up the reserve pool, based on the current reserve analysis. The projected annual cash inflows may include estimated earnings from investment of principal and accounts receivable minus the allowance for doubtful accounts. The reserve funding formula may ~~shall~~ not include any type of balloon payments.

(10) RECALL OF DIRECTORS.--

(c)1. If the declaration, articles of incorporation, or bylaws specifically provide, the members may also recall and remove a board director or directors by a vote taken at a meeting. If so provided in the governing documents, a special meeting of the members to recall a director or directors of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of members, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method

of giving notice of a meeting called in whole or in part for this purpose.

2. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the member meeting to recall one or more directors. At the meeting, the board shall certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or shall proceed as set forth in paragraph ~~subparagraph~~ (d).

(d) If the board determines not to certify the written agreement or written ballots to recall a director or directors of the board or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the meeting, initiate ~~file with the department a petition for~~ binding arbitration pursuant to the applicable procedures in s. 720.507 ~~ss. 718.112(2)(j) and 718.1255 and the rules adopted thereunder~~. For the purposes of this section, the members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any director or directors of the board, the recall will be effective upon mailing of the final order of arbitration to the association. The director or directors so recalled shall deliver to the board any and all records of the association in their possession within 5 full business days after the effective date of the recall.

(12) COMPENSATION PROHIBITED.--A director, officer, or committee member of the association may not receive, directly or indirectly, any salary or compensation from the association for the performance of duties as a director, officer, or committee member and may not in any other way benefit financially from service to the association. This subsection does not preclude:

(a) Participation by such person in a financial benefit accruing to all or a significant number of members as a result of actions lawfully taken by the board or a committee of which he or she is a member, including, but not limited to, routine maintenance, repair, or replacement of community assets.

(b) Reimbursement for out-of-pocket expenses incurred by such person on behalf of the association, subject to approval in accordance with procedures established by the association's governing documents or, in the absence of such procedures, in accordance with an approval process established by the board.

(c) Any recovery of insurance proceeds derived from a policy of insurance maintained by the association for the benefit of its members.

(d) Any fee or compensation authorized in the governing documents.

(e) Any fee or compensation authorized in advance by a vote of a majority of the voting interests voting in person or by proxy at a meeting of the members.

(f) A developer or its representative from serving as a director, officer, or committee member of the association and benefiting financially from service to the association.

(13) BORROWING.--The borrowing of funds or committing to a

line of credit by the board of administration shall be considered a special assessment, and any meeting of the board of administration to discuss such matters must be noticed as provided in paragraph (2)(c). The board may not borrow funds or enter into a line of credit for any purpose unless the specific use of the funds from the loan or line of credit is set forth in the notice of meeting with the same specificity as required for a special assessment or unless the borrowing or line of credit has received the prior approval of at least two-thirds of the voting interests of the association.

(14) TRANSFER FEES.--No charge may be made by the association or anyone on its behalf in connection with the sale, mortgage, lease, sublease, or other transfer of a parcel. Nothing in this subsection may be construed to prohibit an association from requiring as a condition to permitting the letting or renting of a parcel, when the association has such authority in the documents, the depositing into an escrow account maintained by the association of a security deposit in an amount not to exceed the equivalent of 1 month's rent. The security deposit shall protect against damages to the common areas or association property. Within 15 days after a tenant vacates the premises, the association shall refund the full security deposit or give written notice to the tenant of any claim made against the security. Disputes under this subsection shall be handled in the same fashion as disputes concerning security deposits under s. 83.49.

Section 16. Paragraph (a) of subsection (2) of section 720.304, Florida Statutes, is amended to read:

720.304 Right of owners to peaceably assemble; display of flag; SLAPP suits prohibited.--

(2)(a) Any homeowner may display within the boundaries of the homeowner's parcel one portable, removable United States flag ~~or official flag of the State of Florida in a respectful manner, and one portable, removable official flag,~~ in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans' Day, may display in a respectful way portable, removable official flags ~~manner~~, not larger than 4 1/2 feet by 6 feet, that represent ~~which represents~~ the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, ~~or a POW-MIA flag,~~ regardless of any declaration ~~covenants, restrictions, bylaws, rules,~~ or requirements dealing with flags or decorations ~~of the association~~.

Section 17. Subsection (2) of section 720.305, Florida Statutes, is amended to read:

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

(2) If the governing documents so provide, an association may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities and may levy reasonable fines of up to~~, not to exceed~~ $100 per violation, against any member or any tenant, guest, or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no ~~such~~ fine may ~~shall~~ exceed $1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than $1,000 may ~~shall~~ not

become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorney's fees and costs from the nonprevailing party as determined by the court.

(a) A fine or suspension may not be imposed without ~~notice of~~ at least 14 days' notice ~~days~~ to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

(b) The requirements of this subsection do not apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments or other charges when due if such action is authorized by the governing documents.

(c) Suspension of common-area-use rights do ~~shall~~ not impair the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

Section 18. Subsections (8) and (9) of section 720.306, Florida Statutes, are amended to read:

720.306 Meetings of members; voting and election procedures; amendments.--

(8) PROXY VOTING.--The members have the right, unless otherwise provided in this subsection or in the governing documents, to vote in person or by proxy.

(a) To be valid, a proxy must be dated, must state the date, time, and place of the meeting for which it was given, and must be signed by the authorized person who executed the proxy. A proxy is effective only for the specific meeting for which it was originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires 90 days after the date of the meeting for which it was originally given. A proxy is revocable at any time at the pleasure of the person who executes it. If the proxy form expressly so provides, any proxy holder may appoint, in writing, a substitute to act in his or her place.

(b) If the governing documents permit voting by secret ballot by members who are not in attendance at a meeting of the members for the election of directors, such ballots shall be placed in an inner envelope with no identifying markings and mailed or delivered to the association in an outer envelope bearing identifying information reflecting the name of the member, the lot or parcel for which the vote is being cast, and the signature of the lot or parcel owner casting that ballot. After the eligibility of the member to vote and confirmation that no other ballot has been submitted for that lot or parcel, the inner envelope shall be removed from the outer envelope bearing the identification information, placed with the ballots which were personally cast, and opened when the ballots are counted. If more than one ballot is submitted for a lot or

parcel, the ballots for that lot or parcel shall be disqualified. Any vote by ballot received after the closing of the balloting may not be considered.

(9) ELECTIONS; BOARD MEMBER CERTIFICATION.--

(a) Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. All members of the association are ~~shall be~~ eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held or, if the election process allows voting by absentee ballot, in advance of the balloting. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters. Any election dispute between a member and an association must be submitted to mandatory binding arbitration with the division. Such proceedings shall be conducted in the manner provided by s. 720.507 ~~718.1255 and the procedural rules adopted by the division~~.

(b) Within 30 days after being elected to the board of directors, a new director shall certify in writing to the secretary of the association that he or she has read the association's declarations of covenants and restrictions, articles of incorporation, bylaws, and current written policies and that he or she will work to uphold each to the best of his or her ability and will faithfully discharge his or her fiduciary responsibility to the association's members. Failure to timely file such statement shall automatically disqualify the director from service on the association's board of directors.

The secretary shall cause the association to retain a director's certification for inspection by the members for 5 years after a director's election. Failure to have such certification on file does not affect the validity of any appropriate action.

Section 19. Section (8) is added to section 720.3085, Florida Statutes, to read:

720.3085 Payment for assessments; lien claims.--

(8) During the pendency of any foreclosure action of a parcel within a homeowners' association, if the home is occupied by a tenant and the parcel owner is delinquent in the payment of regular assessments, the association may demand that the tenant pay to the association the future regular assessments related to the parcel. The demand shall be continuing in nature, and upon demand the tenant shall continue to pay the regular assessments to the association until the association releases the tenant or the tenant discontinues tenancy in the unit. The association shall mail written notice to the parcel owner of the association's demand that the tenant pay regular assessments to the association. The tenant shall not be liable for increases in the amount of the regular assessment due unless the tenant was reasonably notified of the increase prior to the day that the rent is due. The tenant shall be given a credit against rents due to the parcel owner in the amount of assessments paid to the association. The association shall, upon request, provide the tenant with written receipts for payments made. The association may issue notices under s. 83.56 and may sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 should the tenant fail to pay an

assessment. However, the association shall not otherwise be considered a landlord under chapter 83 and shall specifically not have any duty under s. 83.51. The tenant shall not, by virtue of payment of assessments, have any of the rights of a unit owner to vote in any election or to examine the books and records of the association. A court may supersede the effect of this subsection by appointing a receiver.

Section 20. Section 720.3095, Florida Statutes, is created to read:

720.3095 Management and maintenance agreements entered into by the association.--

(1) A written contract between a party contracting to provide maintenance or management services and an association which provides for operation, maintenance, or management of a homeowners' association is not valid or enforceable unless the contract:

(a) Specifies the services, obligations, and responsibilities of the party contracting to provide maintenance or management services to the unit owners.

(b) Specifies those costs incurred in the performance of those services, obligations, or responsibilities which are to be reimbursed by the association to the party contracting to provide maintenance or management services.

(c) Provides an indication of how often each service, obligation, or responsibility is to be performed, whether stated for each service, obligation, or responsibility or in categories thereof.

(d) Specifies a minimum number of personnel to be employed

by the party contracting to provide maintenance or management services for the purpose of providing service to the association.

(e) Discloses any financial or ownership interest which the developer, if the developer is in control of the association, holds with regard to the party contracting to provide maintenance or management services.

(f) Discloses any financial or ownership interest a board member or any party providing maintenance or management services to the association holds with the contracting party.

(2) In any case in which the party contracting to provide maintenance or management services fails to provide such services in accordance with the contract, the association is authorized to procure such services from some other party and shall be entitled to collect any fees or charges paid for services performed by another party from the party contracting to provide maintenance or management services.

(3) Any services or obligations not stated on the face of the contract shall be unenforceable.

(4) Notwithstanding the fact that certain vendors contract with associations to maintain equipment or property which is made available to serve unit owners, it is the intent of the Legislature that this section applies to contracts for maintenance or management services for which the association pays compensation. This section does not apply to contracts for services or property made available for the convenience of unit owners by lessees or licensees of the association, such as coin-operated laundry, food, soft drink, or telephone vendors; cable

television operators; retail store operators; businesses; restaurants; or similar vendors.

Section 21. Section 720.3096, Florida Statutes, is created to read:

720.3096 Limitation on agreements entered into by the association.--As to any contract or other transaction between an association and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested:

(1) The association must comply with the requirements of s. 617.0832.

(2) The disclosures required by s. 617.0832 must be entered into the written minutes of the meeting.

(3) Approval of the contract or other transaction requires an affirmative vote of at least two-thirds of the directors present.

(4) At the next regular or special meeting of the members, the existence of the contract or other transaction must be disclosed to the members. Upon motion of any member, the contract or transaction shall be brought up for a vote and may be canceled by a majority vote of the members present. If the members cancel the contract, the association is liable for only the reasonable value of goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

Section 22. Section 720.311, Florida Statutes, is repealed.

Section 23. Paragraph (a) of subsection (1) of section 720.401, Florida Statutes, is amended to read:

720.401 Prospective purchasers subject to association membership requirement; disclosure required; covenants; assessments; contract cancellation.--

(1)(a) A prospective parcel owner in a community must be presented a disclosure summary before executing the contract for sale. The disclosure summary must be in a form substantially similar to the following form:

DISCLOSURE SUMMARY
FOR
(NAME OF COMMUNITY)

1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.

2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS COMMUNITY.

3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS $_____ PER _____. YOU WILL ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS $_____ PER _____.

4. YOU MAY BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT. ALL ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

5. YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION MAY ~~COULD~~ RESULT IN A LIEN ON YOUR PROPERTY.

6. THERE MAY BE AN OBLIGATION TO PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. IF APPLICABLE, THE CURRENT AMOUNT IS $_____ PER _____.

7. IF THE ASSOCIATION IS STILL UNDER THE CONTROL OF THE DEVELOPER, THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE RESTRICTIVE COVENANTS WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.

8. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING DOCUMENTS BEFORE PURCHASING PROPERTY.

9. THESE DOCUMENTS ARE ~~EITHER~~ MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE PROPERTY IS LOCATED, OR, IF ~~ARE~~ NOT RECORDED, ~~AND~~ CAN BE OBTAINED FROM THE DEVELOPER.

10. THERE MAY BE AN OBLIGATION TO PAY ASSESSMENTS (TAXES OR FEES) TO A RESIDENTIAL COMMUNITY DEVELOPMENT DISTRICT FOR THE PURPOSE OF RETIRING BOND OBLIGATIONS USED TO CONSTRUCT INFRASTRUCTURE OR OTHER IMPROVEMENTS.

11. YOU ARE JOINTLY AND SEVERALLY LIABLE WITH THE PREVIOUS OWNER OF YOUR PROPERTY FOR ALL UNPAID ASSESSMENTS THAT CAME DUE UP TO THE TIME OF TRANSFER OF TITLE.

DATE: PURCHASER:

PURCHASER:

The disclosure must be supplied by the developer, or by the parcel owner if the sale is by an owner that is not the developer. Any contract or agreement for sale shall refer to and incorporate the disclosure summary and shall include, in prominent language, a statement that the potential buyer should not execute the contract or agreement until he or she has ~~they have~~ received and read the disclosure summary required by this section.

Section 24. Part IV of chapter 720, Florida Statutes, consisting of sections 720.501, 720.502, 720.503, 720.504, 720.505, 720.506, 720.507, 720.508, 720.509, and 720.510, is created to read:

PART IV

DISPUTE RESOLUTION

720.501 Short title.--This part may be cited as the "Home Court Advantage Dispute Resolution Act."

720.502 Legislative findings.--The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation.

720.503 Applicability of this part.--

(1) Unless otherwise provided in this part, before a dispute described in this part between a homeowners' association and a parcel owner or owners, or a dispute between parcel owners within the same homeowners' association, may be filed in court, the dispute is subject to presuit mediation pursuant to s. 720.505 or presuit arbitration pursuant to s. 720.507, at the option of the aggrieved party who initiates the first formal action of alternative dispute resolution under this part. The parties may mutually agree to participate in both presuit mediation and presuit arbitration prior to suit being filed by either party.

(2) Unless otherwise provided in this part, the mediation and arbitration provisions of this part are limited to disputes between an association and a parcel owner or owners or between parcel owners regarding the use of or changes to the parcel or the common areas under the governing documents and other disputes involving violations of the recorded declaration of covenants or other governing documents, disputes arising concerning enforcement of the governing documents or any amendments thereto, and disputes involving access to the official records of the association. A dispute concerning title to any parcel or common area, interpretation or enforcement of any warranty, the levy of a fee or assessment, the collection of an assessment levied against a party, the eviction or other removal of a tenant from a parcel, alleged breaches of fiduciary duty by one or more directors, or any action to collect mortgage indebtedness or to foreclosure a mortgage shall not be subject to the provisions of this part.

(3) A dispute arising after the effective date of this part involving the election of the board of directors for an association or the recall of any member of the board or officer of the association is ineligible for presuit mediation under s. 720.505 and subject to presuit arbitration under s. 720.507.

(4) In any dispute subject to presuit mediation or presuit arbitration under this part for which emergency relief is required, a motion for temporary injunctive relief may be filed with the court without first complying with the presuit mediation or presuit arbitration requirements of this part. After any issues regarding emergency or temporary relief are resolved, the court may refer the parties to a mediation program administered by the courts or require mediation or arbitration under this part.

(5) The mailing of a statutory notice of presuit mediation or presuit arbitration as provided in this part shall toll the applicable statute of limitations during the pendency of the mediation or arbitration and for a period of 30 days following the conclusion of either proceeding. The 30-day period shall start upon the filing of the mediator's notice of impasse or the arbitrator's written arbitration award. If the parties mutually agree to participate in both presuit mediation and presuit arbitration under this part, the tolling of the applicable statute of limitations for each such alternative dispute resolution proceeding shall be consecutive.

720.504 Notice of dispute.--Prior to giving the statutory notice to proceed under presuit mediation or presuit arbitration under this part, the aggrieved association or parcel owner must

first provide written notice of the dispute to the responding party in the manner provided by this section.

(1) The notice of dispute shall be delivered to the responding party by certified mail, return receipt requested, or in person, and the person making delivery shall file with the notice of mediation either the proof of receipt of mailing or an affidavit stating the date and time of the delivery of the notice of dispute. If the notice is delivered by certified mail, return receipt requested, and the responding party fails or refuses to accept delivery, notice shall be considered properly delivered for purposes of this section on the date of the first attempted delivery.

(2) The notice of dispute shall state with specificity the nature of the dispute, including the date, time, and location of each event that is the subject of the dispute and the action requested to resolve the dispute. The notice shall also include the text of any provision in the governing documents, including the rules and regulations, of the association which form the basis of the dispute.

(3) Unless the parties otherwise agree in writing to a longer time period, the party receiving the notice of dispute shall have 10 days following the date of receipt of notice to resolve the dispute. If the alleged dispute has not been resolved within the 10-day period, the aggrieved party may proceed under this part at any time thereafter within the applicable statute of limitations.

(4) A copy of the notice and the text of the provision in the governing documents, or the rules and regulations, of the

association which are the basis of the dispute, along with proof of service of the notice of dispute and a copy of any written responses received from the responding party, shall be included as an exhibit to any demand for mediation or arbitration under this part.

720.505 Presuit mediation.--

(1) Disputes between an association and a parcel owner or owners or between parcel owners must be submitted to presuit mediation before the dispute may be filed in court; or, at the election of the party initiating the presuit procedures, such dispute may be submitted to presuit arbitration pursuant to s. 720.507 before the dispute may be filed in court. An aggrieved party who elects to use the presuit mediation procedure under this section shall serve on the responding party a written notice of presuit mediation in substantially the following form:

STATUTORY NOTICE OF PRESUIT MEDIATION

THE ALLEGED AGGRIEVED PARTY, _____,
HEREBY DEMANDS THAT _____, AS THE
RESPONDING PARTY, ENGAGE IN MANDATORY PRESUIT
MEDIATION IN CONNECTION WITH THE FOLLOWING DISPUTE(S)
WITH YOU, WHICH BY STATUTE ARE OF A TYPE THAT ARE
SUBJECT TO PRESUIT MEDIATION:

ATTACHED IS A COPY OF THE PRIOR NOTICE OF VIOLATION
WHICH DETAILS THE SPECIFIC NATURE OF THE DISPUTE(S) TO
BE MEDIATED AND THE AUTHORITY SUPPORTING A FINDING OF

A VIOLATION AS TO EACH DISPUTE, INCLUDING, BUT NOT LIMITED TO, THE APPLICABLE PROVISIONS OF THE GOVERNING DOCUMENTS OF THE ASSOCIATION BELIEVED TO APPLY TO THE DISPUTE BETWEEN THE PARTIES, AND A COPY OF THE NOTICE YOU RECEIVED OR REFUSED AND COPIES OF ANY WRITTEN RESPONSE(S) RECEIVED FROM YOU ABOUT THIS DISPUTE.

PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES, THIS DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT MEDIATION IS REQUIRED BEFORE A LAWSUIT CAN BE FILED CONCERNING THE DISPUTE. PURSUANT TO FLORIDA STATUTES, THE PARTIES ARE REQUIRED TO ENGAGE IN PRESUIT MEDIATION WITH A NEUTRAL THIRD-PARTY MEDIATOR IN ORDER TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT ACTION, AND THE AGGRIEVED PARTY DEMANDS THAT YOU PARTICIPATE IN THIS PROCESS. UNLESS YOU RESPOND TO THIS NOTICE BY FILING WITH THE AGGRIEVED PARTY A NOTICE OF OPTING OUT AND DEMAND FOR ARBITRATION UNDER SECTION 720.506, FLORIDA STATUTES, YOUR FAILURE TO PARTICIPATE IN THE MEDIATION PROCESS MAY RESULT IN A LAWSUIT BEING FILED IN COURT AGAINST YOU WITHOUT FURTHER NOTICE.

THE PROCESS OF MEDIATION INVOLVES A SUPERVISED NEGOTIATION PROCESS IN WHICH A TRAINED, NEUTRAL THIRD-PARTY MEDIATOR MEETS WITH BOTH PARTIES AND ASSISTS THEM IN EXPLORING POSSIBLE OPPORTUNITIES FOR RESOLVING PART OR ALL OF THE DISPUTE. BY AGREEING TO PARTICIPATE

IN PRESUIT MEDIATION, YOU ARE NOT BOUND IN ANY WAY TO CHANGE YOUR POSITION. FURTHERMORE, THE MEDIATOR HAS NO AUTHORITY TO MAKE ANY DECISIONS IN THIS MATTER OR TO DETERMINE WHO IS RIGHT OR WRONG AND MERELY ACTS AS A FACILITATOR TO ENSURE THAT EACH PARTY UNDERSTANDS THE POSITION OF THE OTHER PARTY AND THAT ALL OPTIONS FOR REASONABLE SETTLEMENT ARE FULLY EXPLORED.

IF AN AGREEMENT IS REACHED, IT SHALL BE REDUCED TO WRITING AND BECOME A BINDING AND ENFORCEABLE CONTRACT BETWEEN THE PARTIES. A RESOLUTION OF ONE OR MORE DISPUTES IN THIS FASHION AVOIDS THE NEED TO LITIGATE THESE ISSUES IN COURT. THE FAILURE TO REACH AN AGREEMENT, OR THE FAILURE OF A PARTY TO PARTICIPATE IN THE PROCESS, RESULTS IN THE MEDIATOR DECLARING AN IMPASSE IN THE MEDIATION, AFTER WHICH THE AGGRIEVED PARTY MAY PROCEED TO FILE A LAWSUIT ON ALL OUTSTANDING, UNSETTLED DISPUTES. IF YOU HAVE FAILED OR REFUSED TO PARTICIPATE IN THE ENTIRE MEDIATION PROCESS, YOU WILL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES IF YOU PREVAIL IN A SUBSEQUENT COURT PROCEEDING INVOLVING THE SAME DISPUTE.

THE AGGRIEVED PARTY HAS SELECTED FROM A LIST OF ELIGIBLE, QUALIFIED MEDIATORS AT LEAST FIVE CERTIFIED MEDIATORS WHO THE AGGRIEVED PARTY BELIEVES TO BE NEUTRAL AND QUALIFIED TO MEDIATE THE DISPUTE. YOU HAVE THE RIGHT TO SELECT ANY ONE OF THESE MEDIATORS. THE

FACT THAT ONE PARTY MAY BE FAMILIAR WITH ONE OR MORE OF THE LISTED MEDIATORS DOES NOT MEAN THAT THE MEDIATOR CANNOT ACT AS A NEUTRAL AND IMPARTIAL FACILITATOR. THE NAMES OF THE MEDIATORS THAT THE AGGRIEVED PARTY HEREBY SUBMITS TO YOU FROM WHOM YOU MAY CHOOSE ONE, AND THEIR CURRENT ADDRESSES, TELEPHONE NUMBERS, AND HOURLY RATES ARE AS FOLLOWS:

(LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND HOURLY RATES OF THE MEDIATORS. OTHER PERTINENT INFORMATION ABOUT THE BACKGROUND OF THE MEDIATORS MAY BE INCLUDED AS AN ATTACHMENT.)

YOU MAY CONTACT THE OFFICES OF THESE MEDIATORS TO CONFIRM THAT EACH OF THE ABOVE-LISTED MEDIATORS WILL BE NEUTRAL AND WILL NOT SHOW ANY FAVORITISM TOWARD EITHER PARTY. UNLESS OTHERWISE AGREED TO BY THE PARTIES, PART IV OF CHAPTER 720, FLORIDA STATUTES, REQUIRES THAT THE PARTIES SHARE THE COSTS OF PRESUIT MEDIATION EQUALLY, INCLUDING THE FEE CHARGED BY THE MEDIATOR. AN AVERAGE MEDIATION MAY REQUIRE 3 TO 4 HOURS OF THE MEDIATOR'S TIME, INCLUDING SOME PREPARATION TIME, AND THE PARTIES WOULD NEED TO EQUALLY SHARE THE MEDIATOR'S FEES AS WELL AS BE RESPONSIBLE FOR ALL OF THEIR OWN ATTORNEY'S FEES IF THEY CHOOSE TO EMPLOY AN ATTORNEY IN CONNECTION WITH THE MEDIATION. HOWEVER, USE OF AN ATTORNEY IS NOT REQUIRED AND IS AT THE OPTION OF EACH PARTY. THE

MEDIATORS MAY REQUIRE THE ADVANCE PAYMENT OF SOME OR ALL OF THE ANTICIPATED FEES. THE AGGRIEVED PARTY HEREBY AGREES TO PAY OR PREPAY ONE-HALF OF THE SELECTED MEDIATOR'S ESTIMATED FEES AND TO FORWARD THIS AMOUNT OR SUCH OTHER REASONABLE ADVANCE DEPOSITS AS THE MEDIATOR REQUIRES FOR THIS PURPOSE UPON THE SELECTION OF THE MEDIATOR. ANY FUNDS DEPOSITED WILL BE RETURNED TO YOU IF THESE FUNDS ARE IN EXCESS OF YOUR SHARE OF THE MEDIATOR FEES INCURRED.

TO BEGIN YOUR PARTICIPATION IN PRESUIT MEDIATION TO TRY TO RESOLVE THE DISPUTE WITH YOU AND AVOID FURTHER LEGAL ACTION, PLEASE SIGN BELOW AND CLEARLY INDICATE WHICH MEDIATOR IS ACCEPTABLE TO YOU FROM THE FIVE MEDIATORS LISTED BY THE AGGRIEVED PARTY ABOVE.

YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE OF PRESUIT MEDIATION WITHIN 20 DAYS. IN YOUR RESPONSE YOU MUST PROVIDE A LISTING OF AT LEAST THREE DATES AND TIMES IN WHICH YOU ARE AVAILABLE TO PARTICIPATE IN THE MEDIATION THAT ARE WITHIN 90 DAYS AFTER THE POSTMARKED DATE OF THE MAILING OF THIS NOTICE OF PRESUIT MEDIATION OR WITHIN 90 DAYS AFTER THE DATE YOU WERE SERVED WITH A COPY OF THIS NOTICE. THE AGGRIEVED PARTY WILL THEN ASK THE MEDIATOR TO SCHEDULE A MUTUALLY CONVENIENT TIME AND PLACE FOR THE MEDIATION CONFERENCE TO BE HELD. IF YOU DO NOT PROVIDE A LIST OF AVAILABLE DATES AND TIMES, THE MEDIATOR IS AUTHORIZED TO

SCHEDULE A MEDIATION CONFERENCE WITHOUT TAKING YOUR SCHEDULE AND CONVENIENCE INTO CONSIDERATION. IN NO EVENT SHALL THE MEDIATION CONFERENCE BE LATER THAN 90 DAYS AFTER THE NOTICE OF PRESUIT MEDIATION WAS FIRST SERVED UNLESS ALL PARTIES MUTUALLY AGREE OTHERWISE. IN THE EVENT THAT YOU FAIL TO RESPOND WITHIN 20 DAYS AFTER THE DATE OF THIS NOTICE, FAIL TO PROVIDE THE MEDIATOR WITH DATES AND TIMES IN WHICH YOU ARE AVAILABLE FOR THE MEDIATION CONFERENCE, FAIL TO AGREE TO ONE OF THE MEDIATORS THAT THE AGGRIEVED PARTY HAS LISTED, FAIL TO PAY OR PREPAY TO THE MEDIATOR ONE-HALF OF THE COSTS INVOLVED, OR FAIL TO APPEAR AND PARTICIPATE AT THE SCHEDULED MEDIATION, THE AGGRIEVED PARTY WILL BE AUTHORIZED TO PROCEED WITH THE FILING OF A LAWSUIT AGAINST YOU WITHOUT FURTHER NOTICE. IN ANY SUBSEQUENT COURT ACTION, THE AGGRIEVED PARTY MAY SEEK AN AWARD OF REASONABLE ATTORNEY'S FEES AND COSTS INCURRED IN ATTEMPTING TO OBTAIN MEDIATION.

PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY LAW, YOUR RESPONSE MUST BE MAILED BY CERTIFIED, FIRST-CLASS MAIL, RETURN RECEIPT REQUESTED, TO THE AGGRIEVED PARTY LISTED ABOVE AT THE ADDRESS SHOWN ON THIS NOTICE AND POSTMARKED NO MORE THAN 20 DAYS AFTER THE DATE OF THE POSTMARKED DATE FOR THIS NOTICE OR WITHIN 20 DAYS AFTER THE DATE UPON WHICH YOU WERE SERVED WITH A COPY OF THIS NOTICE.

_____

SIGNATURE OF AGGRIEVED PARTY

_____

PRINTED NAME OF AGGRIEVED PARTY

RESPONDING PARTY: YOUR SIGNATURE BELOW INDICATES YOUR ACCEPTANCE OF THE AGREEMENT TO MEDIATE.

AGREEMENT TO MEDIATE

THE UNDERSIGNED HEREBY AGREES TO PARTICIPATE IN PRESUIT MEDIATION AND AGREES TO ATTEND A MEDIATION CONDUCTED BY THE MEDIATOR LISTED BELOW AS ACCEPTABLE TO MEDIATE THIS DISPUTE:

(LIST ONE ACCEPTABLE MEDIATOR FROM THOSE LISTED BY THE AGGRIEVED PARTY.)

THE UNDERSIGNED HEREBY REPRESENTS THAT HE OR SHE CAN ATTEND AND PARTICIPATE IN THE PRESUIT MEDIATION AT THE FOLLOWING DATES AND TIMES:

(LIST AT LEAST THREE AVAILABLE DATES AND TIMES WITHIN THE 90-DAY TIME LIMIT DESCRIBED ABOVE.)

I/WE FURTHER AGREE TO PAY OR PREPAY ONE-HALF OF THE MEDIATOR'S FEES AND TO FORWARD SUCH ADVANCE DEPOSITS AS THE MEDIATOR MAY REQUIRE FOR THIS PURPOSE.

_____

SIGNATURE OF RESPONDING PARTY #1

_____

TELEPHONE CONTACT INFORMATION

_____

SIGNATURE AND TELEPHONE CONTACT INFORMATION OF RESPONDING PARTY #2, IF APPLICABLE. IF THE PROPERTY IS OWNED BY MORE THAN ONE PERSON, ALL OWNERS MUST SIGN, OR A PERSON MAY SIGN WHO IS ACTING UNDER AUTHORITY OF A VALID POWER OF ATTORNEY GRANTED BY AN OWNER.

(2)(a) Service of the notice of presuit mediation shall be effected either by personal service, as provided in chapter 48, or by certified mail, return receipt requested, in a letter in substantial conformity with the form provided in subsection (1), with an additional copy being sent by regular first-class mail, to the address of the responding party as it last appears on the books and records of the association or, if not available, then as it last appears in the official records of the county property appraiser where the parcel in dispute is located. The responding party has 20 days after the postmarked date of the mailing of the statutory notice or the date the responding party is served with a copy of the notice to serve a written response

to the aggrieved party. The response shall be served by certified mail, return receipt requested, with an additional copy being sent by regular first-class mail, to the address shown on the statutory notice. The date of the postmark on the envelope for the response shall constitute the date that the response is served. Once the parties have agreed on a mediator, the mediator may schedule or reschedule the mediation for a date and time mutually convenient to the parties within 90 days after the date of service of the statutory notice. After such 90-day period, the mediator may reschedule the mediation only upon the mutual written agreement of all the parties.

(b) The parties shall share the costs of presuit mediation equally, including the fee charged by the mediator, if any, unless the parties agree otherwise, and the mediator may require advance payment of his or her reasonable fees and costs. Each party shall be responsible for that party's own attorney's fees if a party chooses to be represented by an attorney at the mediation.

(c) The party responding to the aggrieved party may provide a notice of opting out under s. 720.506 and demand arbitration or may sign the agreement to mediate included in the notice of presuit mediation. A responding party signing the agreement to mediate must clearly indicate the name of the mediator who is acceptable from the five names provided by the aggrieved party and must provide a list of dates and times in which the responding party is available to participate in the mediation within 90 days after the date the responding party was

served, either by process server or by certified mail, with the statutory notice of presuit mediation.

(d) The mediator who has been selected and agreed to mediate must schedule the mediation conference at a mutually convenient time and place within that 90-day period; but, if the responding party does not provide a list of available dates and times, the mediator is authorized to schedule a mediation conference without taking the responding party's schedule and convenience into consideration. Within 10 days after the designation of the mediator, the mediator shall coordinate with the parties and notify the parties in writing of the date, time, and place of the mediation conference.

(e) The mediation conference must be held on the scheduled date and may be rescheduled if a rescheduled date is approved by the mediator. However, in no event shall the mediation be held later than 90 days after the notice of presuit mediation was first served, unless all parties mutually agree in writing otherwise. If the presuit mediation is not completed within the required time limits, the mediator shall declare an impasse unless the mediation date is extended by mutual written agreement by all parties and approved by the mediator.

(f) If the responding party fails to respond within 20 days after the date of service of the statutory notice of presuit mediation, fails to agree to at least one of the mediators listed by the aggrieved party in the notice, fails to pay or prepay to the mediator one-half of the costs of the mediator, or fails to appear and participate at the scheduled

mediation, the aggrieved party shall be authorized to proceed with the filing of a lawsuit without further notice.

(g)1. The failure of any party to respond to the statutory notice of presuit mediation within 20 days, the failure to agree upon a mediator, the failure to provide a listing of dates and times in which the responding party is available to participate in the mediation within 90 days after the date the responding party was served with the statutory notice of presuit mediation, the failure to make payment of fees and costs within the time established by the mediator, or the failure to appear for a scheduled mediation session without the approval of the mediator shall in each instance constitute a failure or refusal to participate in the mediation process and shall operate as an impasse in the presuit mediation by such party, entitling the other party to file a lawsuit in court and to seek an award of the costs and attorney's fees associated with the mediation.

2. Persons who fail or refuse to participate in the entire mediation process may not recover attorney's fees and costs in subsequent litigation relating to the same dispute between the same parties. If any presuit mediation session cannot be scheduled and conducted within 90 days after the offer to participate in mediation was filed, through no fault of either party, then an impasse shall be deemed to have occurred unless the parties mutually agree in writing to extend this deadline. In the event of such impasse, each party shall be responsible for its own costs and attorney's fees and one-half of any mediator fees and filing fees, and either party may file a lawsuit in court regarding the dispute.

720.506 Opt-out of presuit mediation.--A party served with a notice of presuit mediation under s. 720.505 may opt out of presuit mediation and demand that the dispute proceed under nonbinding arbitration as follows:

(1) In lieu of a response to the notice of presuit mediation as required under s. 720.505, the responding party may serve upon the aggrieved party, in the same manner as the response to a notice for presuit mediation under s. 720.505, a notice of opting out of mediation and demand that the dispute instead proceed to presuit arbitration under s. 720.507.

(2) The aggrieved party shall be relieved from having to satisfy the requirements of s. 720.504 as a condition precedent to filing the demand for presuit arbitration.

(3) Except as otherwise provided in this part, the choice of which presuit alternative dispute resolution procedure is used shall be at the election of the aggrieved party who first initiated such proceeding after complying with the provisions of s. 720.504.

720.507 Presuit arbitration.--

(1) Disputes between an association and a parcel owner or owners or between parcel owners are subject to a demand for presuit arbitration pursuant to this section before the dispute may be filed in court. A party who elects to use the presuit arbitration procedure under this part shall serve on the responding party a written notice of presuit arbitration in substantially the following form:

STATUTORY NOTICE OF PRESUIT ARBITRATION

THE ALLEGED AGGRIEVED PARTY, _____,
HEREBY DEMANDS THAT _____, AS THE
RESPONDING PARTY, ENGAGE IN MANDATORY PRESUIT
ARBITRATION IN CONNECTION WITH THE FOLLOWING
DISPUTE(S) WITH YOU, WHICH BY STATUTE ARE OF A TYPE
THAT ARE SUBJECT TO PRESUIT ARBITRATION:

(LIST SPECIFIC NATURE OF THE DISPUTE OR DISPUTES TO BE
ARBITRATED AND THE AUTHORITY SUPPORTING A FINDING OF A
VIOLATION AS TO EACH DISPUTE, INCLUDING, BUT NOT
LIMITED TO, ALL APPLICABLE PROVISIONS OF THE GOVERNING
DOCUMENTS BELIEVED TO APPLY TO THE DISPUTE BETWEEN THE
PARTIES.)

PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES,
THIS DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT
ARBITRATION IS REQUIRED BEFORE A LAWSUIT CAN BE FILED
CONCERNING THE DISPUTE. PURSUANT TO FLORIDA STATUTES,
THE PARTIES ARE REQUIRED TO ENGAGE IN PRESUIT
ARBITRATION WITH A NEUTRAL THIRD-PARTY ARBITRATOR IN
ORDER TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT
ACTION, AND THE AGGRIEVED PARTY DEMANDS THAT YOU
PARTICIPATE IN THIS PROCESS. IF YOU FAIL TO
PARTICIPATE IN THE ARBITRATION PROCESS, A LAWSUIT MAY
BE BROUGHT AGAINST YOU IN COURT WITHOUT FURTHER
WARNING.

THE PROCESS OF ARBITRATION INVOLVES A NEUTRAL THIRD PERSON WHO CONSIDERS THE LAW AND FACTS PRESENTED BY THE PARTIES AND RENDERS A WRITTEN DECISION CALLED AN "ARBITRATION AWARD." PURSUANT TO SECTION 720.507, FLORIDA STATUTES, THE ARBITRATION AWARD SHALL BE FINAL UNLESS A LAWSUIT IS FILED IN A COURT OF COMPETENT JURISDICTION FOR THE JUDICIAL CIRCUIT IN WHICH THE PARCEL(S) GOVERNED BY THE HOMEOWNERS' ASSOCIATION IS/ARE LOCATED WITHIN 30 DAYS AFTER THE DATE OF THE ARBITRATION AWARD.

IF A SETTLEMENT AGREEMENT IS REACHED BEFORE THE ARBITRATION AWARD, IT SHALL BE REDUCED TO WRITING AND BECOME A BINDING AND ENFORCEABLE CONTRACT OF THE PARTIES. A RESOLUTION OF ONE OR MORE DISPUTES IN THIS FASHION AVOIDS THE NEED TO ARBITRATE THESE ISSUES OR TO LITIGATE THESE ISSUES IN COURT AND SHALL BE THE SAME AS A SETTLEMENT AGREEMENT REACHED BETWEEN THE PARTIES UNDER SECTION 720.505, FLORIDA STATUTES. THE FAILURE OF A PARTY TO PARTICIPATE IN THE ARBITRATION PROCESS MAY RESULT IN THE ARBITRATOR ISSUING AN ARBITRATION AWARD BY DEFAULT IN THE ARBITRATION. IF YOU HAVE FAILED OR REFUSED TO PARTICIPATE IN THE ENTIRE ARBITRATION PROCESS, YOU WILL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES IF YOU PREVAIL IN A SUBSEQUENT COURT PROCEEDING INVOLVING THE SAME DISPUTE.

THE AGGRIEVED PARTY HAS SELECTED AT LEAST FIVE ARBITRATORS WHO THE AGGRIEVED PARTY BELIEVES TO BE NEUTRAL AND QUALIFIED TO ARBITRATE THE DISPUTE. YOU HAVE THE RIGHT TO SELECT ANY ONE OF THE ARBITRATORS. THE FACT THAT ONE PARTY MAY BE FAMILIAR WITH ONE OR MORE OF THE LISTED ARBITRATORS DOES NOT MEAN THAT THE ARBITRATOR CANNOT ACT AS A NEUTRAL AND IMPARTIAL ARBITRATOR. ANY ARBITRATOR WHO CANNOT ACT IN THIS CAPACITY IS REQUIRED ETHICALLY TO DECLINE TO ACCEPT ENGAGEMENT. THE NAMES OF THE FIVE ARBITRATORS THAT THE AGGRIEVED PARTY HAS CHOSEN FROM WHICH YOU MAY SELECT ONE, AND THEIR CURRENT ADDRESSES, TELEPHONE NUMBERS, AND HOURLY RATES, ARE AS FOLLOWS:

(LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND HOURLY RATES OF AT LEAST FIVE ARBITRATORS.)

YOU MAY CONTACT THE OFFICES OF THESE ARBITRATORS TO CONFIRM THAT THE LISTED ARBITRATORS WILL BE NEUTRAL AND WILL NOT SHOW ANY FAVORITISM TOWARD EITHER PARTY.

UNLESS OTHERWISE AGREED TO BY THE PARTIES, PART IV OF CHAPTER 720, FLORIDA STATUTES, REQUIRES THAT THE PARTIES SHARE THE COSTS OF PRESUIT ARBITRATION EQUALLY, INCLUDING THE FEE CHARGED BY THE ARBITRATOR. THE PARTIES SHALL BE RESPONSIBLE FOR THEIR OWN ATTORNEY'S FEES IF THEY CHOOSE TO EMPLOY AN ATTORNEY IN CONNECTION WITH THE ARBITRATION. HOWEVER, USE OF AN

ATTORNEY TO REPRESENT YOU FOR THE ARBITRATION IS NOT REQUIRED. THE ARBITRATOR SELECTED MAY REQUIRE THE ADVANCE PAYMENT OF SOME OR ALL OF THE ANTICIPATED FEES. THE AGGRIEVED PARTY HEREBY AGREES TO PAY OR PREPAY ONE-HALF OF THE SELECTED ARBITRATOR'S ESTIMATED FEES AND TO FORWARD THIS AMOUNT OR SUCH OTHER REASONABLE ADVANCE DEPOSITS AS THE ARBITRATOR WHO IS SELECTED REQUIRES FOR THIS PURPOSE. ANY FUNDS DEPOSITED WILL BE RETURNED TO YOU IF THESE FUNDS ARE IN EXCESS OF YOUR SHARE OF THE FEES INCURRED.

PLEASE SIGN THE AGREEMENT TO ARBITRATE BELOW AND CLEARLY INDICATE THE NAME OF THE ARBITRATOR WHO IS ACCEPTABLE TO YOU FROM THE NAMES LISTED BY THE AGGRIEVED PARTY.

YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE WITHIN 20 DAYS AFTER THE DATE THAT THE NOTICE OF PRESUIT ARBITRATION WAS PERSONALLY SERVED ON YOU OR THE POSTMARKED DATE THAT THIS NOTICE OF PRESUIT ARBITRATION WAS SENT TO YOU BY CERTIFIED MAIL. YOU MUST ALSO PROVIDE A LIST OF AT LEAST THREE DATES AND TIMES IN WHICH YOU ARE AVAILABLE TO PARTICIPATE IN THE ARBITRATION THAT ARE WITHIN 90 DAYS AFTER THE DATE YOU WERE PERSONALLY SERVED OR WITHIN 90 DAYS AFTER THE POSTMARKED DATE OF THE CERTIFIED MAILING OF THIS STATUTORY NOTICE OF PRESUIT ARBITRATION. A COPY OF THIS NOTICE AND YOUR RESPONSE WILL BE PROVIDED BY THE

AGGRIEVED PARTY TO THE ARBITRATOR SELECTED, AND THE ARBITRATOR WILL SCHEDULE A MUTUALLY CONVENIENT TIME AND PLACE FOR THE ARBITRATION CONFERENCE TO BE HELD. IF YOU DO NOT PROVIDE A LIST OF AVAILABLE DATES AND TIMES, THE ARBITRATOR IS AUTHORIZED TO SCHEDULE AN ARBITRATION CONFERENCE WITHOUT TAKING YOUR SCHEDULE AND CONVENIENCE INTO CONSIDERATION. THE ARBITRATION CONFERENCE MUST BE HELD ON THE SCHEDULED DATE, OR ANY RESCHEDULED DATE APPROVED BY THE ARBITRATOR. IN NO EVENT SHALL THE ARBITRATION CONFERENCE BE LATER THAN 90 DAYS AFTER NOTICE OF THE PRESUIT ARBITRATION WAS FIRST SERVED, UNLESS ALL PARTIES MUTUALLY AGREE IN WRITING OTHERWISE. IF THE ARBITRATION IS NOT COMPLETED WITHIN THE REQUIRED TIME LIMITS, THE ARBITRATOR SHALL ISSUE AN ARBITRATION AWARD, UNLESS THE HEARING IS EXTENDED BY MUTUAL WRITTEN AGREEMENT OF THE PARTIES AND APPROVED BY THE ARBITRATOR. IN THE EVENT THAT YOU FAIL TO RESPOND WITHIN 20 DAYS AFTER THE DATE YOU WERE SERVED WITH A COPY OF THIS NOTICE, FAIL TO PROVIDE THE ARBITRATOR WITH DATES AND TIMES IN WHICH YOU ARE AVAILABLE FOR THE ARBITRATION CONFERENCE, FAIL TO AGREE TO ONE OF THE ARBITRATORS THAT THE AGGRIEVED PARTY HAS NAMED, FAIL TO PAY OR PREPAY TO THE ARBITRATOR ONE-HALF OF THE COSTS INVOLVED AS REQUIRED, OR FAIL TO APPEAR AND PARTICIPATE AT THE SCHEDULED ARBITRATION CONFERENCE, THE AGGRIEVED PARTY MAY REQUEST THE ARBITRATOR TO ISSUE AN ARBITRATION AWARD. IN ANY SUBSEQUENT COURT ACTION, THE AGGRIEVED PARTY

SHALL BE ENTITLED TO RECOVER AN AWARD OF REASONABLE ATTORNEY'S FEES AND COSTS, INCLUDING ANY FEES PAID TO THE ARBITRATOR, INCURRED IN OBTAINING AN ARBITRATION AWARD PURSUANT TO SECTION 720.507, FLORIDA STATUTES.

PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY LAW, YOUR RESPONSE MUST BE POSTMARKED AND MAILED BY CERTIFIED, FIRST-CLASS MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESS SHOWN ON THIS NOTICE OF PRESUIT ARBITRATION.

_____

SIGNATURE OF AGGRIEVED PARTY

_____

PRINTED NAME OF AGGRIEVED PARTY

RESPONDING PARTY: YOUR SIGNATURE BELOW INDICATES YOUR ACCEPTANCE OF THE AGREEMENT TO ARBITRATE.

AGREEMENT TO ARBITRATE

THE UNDERSIGNED HEREBY AGREES TO PARTICIPATE IN PRESUIT ARBITRATION AND AGREES TO ATTEND AN ARBITRATION CONDUCTED BY THE FOLLOWING ARBITRATOR LISTED BELOW AS SOMEONE WHO WOULD BE ACCEPTABLE TO ARBITRATE THIS DISPUTE:

(IN YOUR RESPONSE, SELECT THE NAME OF ONE ARBITRATOR THAT IS ACCEPTABLE TO YOU FROM THOSE ARBITRATORS LISTED BY THE AGGRIEVED PARTY.)

THE UNDERSIGNED HEREBY REPRESENTS THAT HE OR SHE IS AVAILABLE AND ABLE TO ATTEND AND PARTICIPATE IN THE PRESUIT ARBITRATION CONFERENCE AT THE FOLLOWING DATES AND TIMES:

(LIST ALL AVAILABLE DATES AND TIMES, OF WHICH THERE MUST BE AT LEAST THREE, WITHIN 90 DAYS AFTER THE DATE ON WHICH YOU WERE SERVED, EITHER BY PROCESS SERVER OR BY CERTIFIED MAIL, WITH THE NOTICE OF PRESUIT ARBITRATION.)

I/WE FURTHER AGREE TO PAY OR PREPAY ONE-HALF OF THE ARBITRATOR'S FEES AND TO FORWARD SUCH ADVANCE DEPOSITS AS THE ARBITRATOR MAY REQUIRE FOR THIS PURPOSE.

_____

SIGNATURE OF RESPONDING PARTY #1

_____

TELEPHONE CONTACT INFORMATION

_____

SIGNATURE AND TELEPHONE CONTACT INFORMATION OF RESPONDING PARTY #2, IF APPLICABLE. IF THE PROPERTY IS OWNED BY MORE THAN ONE PERSON, ALL OWNERS MUST SIGN,

OR A PERSON MAY SIGN WHO IS ACTING UNDER AUTHORITY OF A VALID POWER OF ATTORNEY GRANTED BY AN OWNER.

(2)(a) Service of the notice of presuit arbitration shall be effected either by personal service, as provided in chapter 48, or by certified mail, return receipt requested, in a letter in substantial conformity with the form provided in subsection (1), with an additional copy being sent by regular first-class mail, to the address of the responding party as it last appears on the books and records of the association or, if not available, the last address as it appears on the official records of the county property appraiser for the county in which the property is situated that is subject to the association documents. The responding party has 20 days after the postmarked date of the certified mailing of the statutory notice of presuit arbitration or the date the responding party is personally served with the statutory notice of presuit arbitration to serve a written response to the aggrieved party. The response shall be served by certified mail, return receipt requested, with an additional copy being sent by regular first-class mail, to the address shown on the statutory notice of presuit arbitration. The postmarked date on the envelope of the response shall constitute the date the response was served.

(b) The parties shall share the costs of presuit arbitration equally, including the fee charged by the arbitrator, if any, unless the parties agree otherwise, and the arbitrator may require advance payment of his or her reasonable fees and costs. Each party shall be responsible for that party's

own attorney's fees if a party chooses to be represented by an attorney for the arbitration proceedings.

(c)1. The party responding to the aggrieved party must sign the agreement to arbitrate included in the notice of presuit arbitration and clearly indicate the name of the arbitrator who is acceptable of those arbitrators listed by the aggrieved party. The responding party must provide a list of at least three dates and times in which the responding party is available to participate in the arbitration conference within 90 days after the date the responding party was served with the statutory notice of presuit arbitration.

2. The arbitrator must schedule the arbitration conference at a mutually convenient time and place, but if the responding party does not provide a list of available dates and times, the arbitrator is authorized to schedule an arbitration conference without taking the responding party's schedule and convenience into consideration. Within 10 days after the designation of the arbitrator, the arbitrator shall notify the parties in writing of the date, time, and place of the arbitration conference.

3. The arbitration conference must be held on the scheduled date and may be rescheduled if approved by the arbitrator. However, in no event shall the arbitration hearing be later than 90 days after the notice of presuit arbitration was first served, unless all parties mutually agree in writing otherwise. If the arbitration hearing is not completed within the required time limits, the arbitrator may issue an arbitration award unless the time for the hearing is extended as provided herein.

4. If the responding party fails to respond within 20 days after the date of statutory notice of presuit arbitration, fails to agree to at least one of the arbitrators that have been listed by the aggrieved party in the presuit notice of arbitration, fails to pay or prepay to the arbitrator one-half of the costs involved, or fails to appear and participate at the scheduled arbitration, the aggrieved party is authorized to proceed with a request that the arbitrator issue an arbitration award.

(d)1. The failure of any party to respond to the statutory notice of presuit arbitration within 20 days, the failure to select one of the arbitrators listed by the aggrieved party, the failure to provide a listing of dates and times in which the responding party is available to participate in the arbitration conference within 90 days after the date of the responding party being served with the statutory notice of presuit arbitration, the failure to make payment of fees and costs as required within the time established by the arbitrator, or the failure to appear for an arbitration conference without the approval of the arbitrator shall entitle the other party to request the arbitrator to enter an arbitration award, including an award of the reasonable costs and attorney's fees associated with the arbitration.

2. Persons who fail or refuse to participate in the entire arbitration process may not recover attorney's fees and costs in any subsequent litigation proceeding relating to the same dispute involving the same parties.

(3)(a) In an arbitration proceeding, the arbitrator may not consider any unsuccessful mediation of the dispute.

(b) An arbitrator in a proceeding initiated pursuant to this part may shorten the time for discovery or otherwise limit discovery in a manner consistent with the policy goals of this part to reduce the time and expense of litigating homeowners' association disputes initiated pursuant to this chapter and to promote an expeditious alternative dispute resolution procedure for parties to such actions.

(4) At the request of any party to the arbitration, the arbitrator may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence, and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and are enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may, at the discretion of the arbitrator, be permitted in the manner provided by the Florida Rules of Civil Procedure.

(5) The final arbitration award shall be sent to the parties in writing no later than 30 days after the date of the arbitration hearing, absent extraordinary circumstances necessitating a later filing the reasons for which shall be stated in the final award if filed more than 30 days after the date of the final session of the arbitration conference. An agreed arbitration award is final in those disputes in which the parties have mutually agreed to be bound. An arbitration award decided by the arbitrator is final unless a lawsuit seeking a trial de novo is filed in a court of competent jurisdiction

within 30 days after the date of the arbitration award. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator.

(6) The party filing a motion for a trial de novo shall be assessed the other party's arbitration costs, court costs, and other reasonable costs, including attorney's fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing, if the judgment upon the trial de novo is not more favorable than the final arbitration award.

720.508 Rules of procedure.--

(1) Presuit mediation and presuit arbitration proceedings under this part must be conducted in accordance with the applicable Florida Rules of Civil Procedure and rules governing mediations and arbitrations under chapter 44, except that this part shall be controlling to the extent of any conflict with other applicable rules or statutes. The arbitrator may shorten any applicable time period and otherwise limit the scope of discovery on request of the parties or within the discretion of the arbitrator exercised consistent with the purpose and objective of reducing the expense and expeditiously concluding proceedings under this part.

(2) Presuit mediation proceedings under s. 720.505 are privileged and confidential to the same extent as court-ordered

mediation under chapter 44. An arbitrator or judge may not consider any information or evidence arising from the presuit mediation proceeding except in a proceeding to impose sanctions for failure to attend a presuit mediation session or to enforce a mediated settlement agreement.

(3) Persons who are not parties to the dispute may not attend the presuit mediation conference without consent of all parties, with the exception of counsel for the parties and a corporate representative designated by the association. Presuit mediations under this part are not a board meeting for purposes of notice and participation set forth in this chapter.

(4) Attendance at a mediation conference by the board of directors shall not require notice or participation by nonboard members as otherwise required by this chapter for meetings of the board.

(5) Settlement agreements resulting from a mediation or arbitration proceeding do not have precedential value in proceedings involving parties other than those participating in the mediation or arbitration.

(6) Arbitration awards by an arbitrator shall have precedential value in other proceedings involving the same association or with respect to the same parcel owner.

720.509 Mediators and arbitrators; qualifications.--A person is authorized to conduct mediation or arbitration under this part if he or she has been certified as a circuit court civil mediator under the requirements adopted pursuant to s. 44.106, is a member in good standing with The Florida Bar, and otherwise meets all other requirements imposed by chapter 44.

720.510 Enforcement of mediation agreement or arbitration award.--

(1) A mediation settlement may be enforced through the county or circuit court, as applicable, and any costs and attorney's fees incurred in the enforcement of a settlement agreement reached at mediation shall be awarded to the prevailing party in any enforcement action.

(2) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the homeowners' association is located. The prevailing party in such proceeding shall be awarded reasonable attorney's fees and costs incurred in such proceeding.

(3) If a complaint is filed seeking a trial de novo, the arbitration award shall be stayed and a petition to enforce the award may not be granted. Such award, however, shall be admissible in the court proceeding seeking a trial de novo.

Section 25. All new residential construction in any deed-restricted community that requires mandatory membership in the association under chapter 718, chapter 719, or chapter 720, Florida Statutes, must comply with the provisions of Pub. L. No. 110-140, Title XIV, ss. 1402 to 1406, 15 U.S.C. ss. 8001-8005.

Section 26. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 125 Rental Property Foreclosure or Short-sale Actions
SPONSOR(S): Rogers; Soto
TIED BILLS: None **IDEN./SIM. BILLS:** SB 854

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice & Courts Policy Committee		Bond	De La Paz
2) Insurance, Business & Financial Affairs Policy Committee			
3) Policy Council			
4) Criminal & Civil Justice Policy Council			
5)			

SUMMARY ANALYSIS

Foreclosure is the legal process for enforcing a lien against real property through the use of a forced sale of the property where the proceeds of the sale are paid to the lender or other persons who hold liens against the property in the order of their priority. Current Florida law provides no specific protections for tenants of a foreclosed property.

This bill requires a lender to give a tenant notice of pending foreclosure. If the lender fails to give notice, the lender must pay the tenants' moving costs. A lender must to offer to sell the foreclosed property to a tenant for the fair market value of the property. This bill also requires the lender to pay the mortgage escrow balance to the tenant.

This bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Law

Foreclosure is the legal process for enforcing a lien against real property through the use of a forced sale of the property where the proceeds of the sale are paid to the lender or other persons who hold liens against the property in the order of their priority. As of August, 2009, Florida had the second highest residential foreclosure rate in the county, with 1 in every 140 housing units in foreclosure.[1]

Florida law does not provide any specific protection to tenants in foreclosure. A tenant will be given notice of the foreclosure at its commencement, and will be provided periodic notices if the tenant files an appearance in the action. However, a tenant who enters into occupancy after the commencement of the foreclosure may not receive any notice required by state law until the conclusion of the process. That notice is a Writ of Possession, which gives the tenant 24 hours notice to vacate. A tenant that does not vacate within those 24 hours may be forcibly removed.

A recent federal law appears to resolve the issue of some tenants receiving very little notice to vacate. On May 20, 2009, the President signed a law containing the "Protecting Tenants at Foreclosure Act of 2009."[2] The act provides that the purchaser of residential real property at foreclosure takes title subject to the rights of a bona fide tenant of the property. A bona fide lease is an arms-length lease where the tenant is not a close relative of the owner who was foreclosed and the rent is not substantially less than the fair-market rent for the property. A bona fide tenant must be given 90 days notice to vacate the property. The purchaser at the foreclosure sale must also honor the lease of a bona fide tenant through its term, although if the property is subsequently sold to a person who will occupy the property the tenant may be asked to leave on 90 days notice. The act is repealed effective December 31, 2012.

Tenants, together with the general public, are given notice that a property subject to foreclosure will be auctioned off at public sale at a date and time certain. Every tenant has the right, under current law, to purchase the leased property at its fair market value at the foreclosure sale.

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[1] *FORECLOSURE ACTIVITY REMAINS NEAR RECORD LEVEL IN AUGUST*, by RealtyTrac, accessed at http://www.realtytrac.com/contentmanagement/pressrelease.aspx?channelid=9&accnt=0&itemid=7381 on October 12, 2009.

[2] Title VII of Pub.L. 111-22

Effect of Bill

This bill creates an unnumbered section of law regarding tenants' rights in foreclosure.

The bill requires a lender to notify a tenant that a foreclosure case is pending. The form of notice is not specified. If the lender fails to provide this notice, the lender is liable to the tenant for "closing costs or relocation costs and attorney's fees and related costs." It is unclear how these damages would be calculated. A tenant has 90 days after learning of the foreclosure within which to file an action for damages under this provision.

The bill requires a lender to "provide the tenant or lessee with a first right of refusal to purchase the property at fair market value." It is unclear what this means. A "first right of refusal" is the right to match the price offered by a third party, which price may or may not be the fair market value of the property. For a tenant to have this option right, the tenant must show proof of the rental agreement and must have been a tenant for at least one year prior to the exercise of the right.

If the tenant exercises the purchase option, the lender must credit the remaining balance in the escrow fund for closing costs. If a tenant does not exercise the option, the lender must use escrow funds to pay the tenants' relocation costs.

B. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law related to tenants' rights in foreclosure actions.

Section 2 provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears to create the potential for a significant negative economic impact on mortgage lenders and a corresponding positive impact on tenants.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   This bill requires a lender to disburse monies held in the escrow account for the benefit of a tenant. The escrow fund represents monies paid by the borrower and held for the benefit of the borrower until paid for a specific purpose. The typical specific purpose of those funds in escrow is to pay property taxes and property insurance owed by the borrower, and to ensure to the lender that these important obligations are paid. Until disbursed for those purposes on behalf of the borrower, the borrower is the owner of such funds. A requirement to use escrow funds for another purpose and to be distributed to another person may be construed by a court to be in impairment of contract prohibited by art. I, s. 10 of the state and federal constitutions, or may be considered an unlawful taking under art. X, s. 6 of the state constitution or the 14th amendment to the federal constitution.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   A lack of specificity in the bill is likely to lead to extensive litigation. The bill uses the term "first right of refusal", but appears to create an option to purchase the real property. The bill requires sale at fair market value, but fails to say how fair market value is to be determined, the form of notice to the tenant, what date the tenant will be required by exercise the option by, and who is responsible for closing costs. It is unclear how the lender can comply with the requirement to offer the property for sale to the tenant, given that the notice appears to be required at the commencement of the action, yet the lender is not the legal owner of the property at that time (and will not be the legal owner of the property unless the owner continues to default, the court enters a final judgment, the property goes to sale, and the lender is the winning bidder at the auction).

   The bill presumes that a lender will have escrow funds available to pay to a tenant. By the time a property is sold at foreclosure sale, it is uncommon for there to be any funds in escrow. Escrow funds are used by a lender to pay property insurance and property taxes. Federal law limits lenders to holding no more than is necessary in the escrow account, plus a cushion of no more than 2 months. Lenders typically wait at least 3 months without payment before filing a foreclosure suit, and a typical foreclosure case is over a year from filing to foreclosure sale, thus it would be unusual for there to be a remaining balance in an escrow account.

   The measure of damages for failure to give a tenant notice required by this bill is the tenants' moving costs. It is unclear how these damages would be calculated and is unclear whether such damages would be limited to the cost of a local move or limited to reasonable costs incurred by the tenant.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to rental property foreclosure or short-sale actions; requiring lenders to notify tenants or lessees of potential foreclosure or short-sale actions against the rental property; requiring the lenders to provide tenants or lessees a first right of refusal to purchase the property at fair market value; specifying eligibility requirements to exercise such right; requiring lenders to use certain escrow funds for certain purposes; specifying lender liability for certain costs for failure to comply with certain notice requirements; specifying time restrictions on tenants or lessees bringing actions for damages; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) Upon consideration of initiating a foreclosure or short-sale proceeding against mortgaged property that is subject to a rental or lease agreement, the lender shall notify each tenant or lessee that such action may be initiated against the property of which the tenant's or lessee's dwelling unit is a part. The lender shall provide the tenant or lessee with a first right of refusal to purchase the property at fair market value. In order to exercise such right, the tenant or lessee must show proof of the rental agreement and a rental history of at least 1 year. The lender shall use any funds held in escrow relating to such mortgage or note for the purpose of closing costs of the purchase if the tenant or lessee chooses

the option to purchase. If the tenant or lessee does not choose the option to purchase, the lender shall use such escrow funds to relocate the tenant or lessee.

(2) Failure to comply with the notice requirements of subsection (1) renders the lender liable for closing costs or relocation costs and attorney's fees and related costs. Any action by the tenant or lessee to recover damages must be brought within 90 days after such notice or after the tenant or lessee learns of the lender's failure to provide such notice.

Section 2. This act shall take effect July 1, 2010.

Amendment No. 1

COUNCIL/COMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Civil Justice & Courts Policy Committee

Representative(s) Rogers offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 45.035, Florida Statutes, is created to read:

45.035 Rights of a residential tenant in foreclosure actions.--

(1) APPLICABILITY.--This section shall only apply to real property that is:

(a) Occupied by a tenant which tenancy is subject to part II of chapter 83; and

(b) Is subject to a foreclosure action.

(2) DEFINITIONS.--As used in this section:

(a) A lease or tenancy shall be considered bona fide only if the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant; the lease or

tenancy was the result of an arms-length transaction; and the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy.

(b) The term "short sale" shall mean a negotiated sale of real property in which any mortgagee holding a mortgage encumbering the real property agrees that the mortgagor may sell the real property to a third party and the mortgagee will release the mortgagee's lien against the real property in exchange for a sum that is less than the current outstanding balance owed on such mortgage.

(3) NOTICE TO VACATE AFTER FORECLOSURE SALE.--In the case of any foreclosure of any dwelling or residential real property, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to:

(a) The provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and

(b) The rights of any bona fide tenant, as of the date of such notice of foreclosure:

1. Under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

2. Without a lease or with a lease terminable at will, subject to the receipt by the tenant of the 90 day notice under subsection (1).

(c) Nothing under this subsection shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any law that provides longer time periods or other additional protections for tenants.

(d) It is the intent of the legislature that this subsection be interpreted in harmony with the federal Protecting Tenants in Foreclosure Act of 2009.

(4) TENANT'S FIRST RIGHT OF REFUSAL UPON SHORT SALE.--

(a) If a mortgagor and mortgagee agree to a short sale of the leased property to a third party other than a bona fide tenant, the mortgagee or the mortgagor shall notify the bona fide tenant of the sales contract and the terms thereof and shall give such bona fide tenant a first right of refusal to purchase the leased property on the same terms and conditions. The notice must be in writing, must give reply addresses for the mortgagee and mortgagor, must be hand delivered with a receipt or furnished by certified mail, and must clearly inform the tenant of the right of first refusal together with what the tenant must do to exercise the right.

(b) The tenant shall have 15 days from receipt of the notice to exercise the first right of refusal. To be effective, the exercise of the right must:

1. Be in writing furnished to mortgagee and mortgagor at the addresses indicated in the notice of the right.

2. Be accompanied by proof that the tenant has furnished a contract deposit of at least the lesser or the amount in the contract with the third party or one percent of the contract amount. The security deposit may be placed, at the tenant's election, with a person licensed under ch. 475, an attorney licensed by the Florida Bar, or a title insurance agency licensed under s. 626.8418. If the contract does not close, the deposit shall be refundable on the same terms and conditions as the deposit would be refundable to the third party.

(c) A tenant who has exercised the right of first refusal shall be given at least 30 days from exercise of the right to close.

(d) If a bona fide tenant is not provided any notice as required in paragraph (a), or if the notice is substantially deficient, the tenant shall have a cause of action against the mortgagor and the mortgagee, who shall be jointly and severally liable to the tenant for all reasonable local moving expenses of the tenant moving from the leased property. A tenant must file an action under this paragraph within 1 year of moving.

(5) SALE TO TENANT AFTER FORECLOSURE SALE.--

(a) If the mortgagee is the successful bidder at the foreclosure sale, the mortgagee shall offer to sell the property to a bona fide tenant pursuant to this subsection. The offer shall be to purchase the property at its fair market value. The mortgagee shall notify the tenant of the right to purchase. Notice must be in writing, must give a reply address for the mortgagee, must contain a copy of an appraisal setting forth the fair market value of the property, must be hand delivered with a

receipt or furnished by certified mail, and must clearly inform the tenant of the right to purchase together with what the tenant must do to exercise the right. The notice shall be sent within 15 days after the clerk issues the certificate of title.

(b) The tenant shall have 15 days from receipt of the notice to exercise the option to purchase. To be effective, the exercise of the right must:

1. Be in writing furnished to mortgagee at the address indicated in the notice of the right.

2. Be accompanied by proof that the tenant has posted a security deposit of at least one percent of the fair market value of the property. The security deposit may be placed with a listing agent named by the mortgagee, or with an attorney or title company of the tenant's choosing.

(c) The terms of the sales contract between the parties shall be as follows:

1. The sales price shall be the fair market value of the property. The mortgagee shall furnish the tenant with a recent appraisal of the property. The fair market value of the property shall be the appraised value of the property as set forth in this appraisal unless the tenant objects to the appraised value, in which case the parties shall attempt to negotiate a price or a court finds that the appraisal is substantially wrong, in which case the court shall set the price. Fair market value shall not be diminished by any intentional damage to the property caused by the tenant.

2. At closing, the mortgagee shall pay for documentary stamp taxes, an owner's title insurance policy, and FHA/VA costs

required of a seller, if any. The tenant shall pay all other closing costs.

3. The closing date shall be at a negotiated time and place. The time for closing shall be at least 30 days from the date of the tenant's notice to the mortgagee that the tenant is exercising the option.

4. The contract is not assignable by the tenant.

5. Inspection terms, right to refund of the deposit, and other terms shall be as if the parties had executed the standard FAR/Florida Bar residential real estate contract.

(d) At closing, the tenant shall be given a credit for rent paid in advance and all security deposits. The mortgagor may not deduct any monies from a security deposit for damages to the dwelling unit, and shall not be liable for the notices at the end of a lease term otherwise required under s. 83.49.

(e) If a bona fide tenant is not provided any notice as required in paragraph (a), or if the notice is substantially deficient, the tenant shall have a cause of action against the mortgagor and the mortgagee, who shall be jointly and severally liable to the tenant for all reasonable local moving expenses of the tenant moving from the leased property. A tenant must file an action under this paragraph within 1 year of moving.

(6) WAIVER.--The rights of a bona fide tenant created by this section may not be waived as a condition of the lease, but may be waived by a tenant at any time after the filing of the foreclosure action by a separate writing and consideration.

(7) COSTS AND FEES.--The prevailing party in any litigation under this section shall be awarded reasonable costs and attorney's fees.

(8) TITLE.--No claim under this section shall affect the validity or finality of a final judgment in foreclosure. No claim under this section shall affect the validity or finality of any sale held pursuant to such judgment or order. No claim under this section shall affect the validity of title to real property.

Section 2. This act shall take effect July 1, 2010.

T I T L E A M E N D M E N T

Remove the entire title and insert:

An act relating to rental property foreclosure or short sale actions; providing applicability; providing a definition; requiring notice to a certain tenants regarding foreclosure; providing an exception; providing legislative intent; creating a tenant's first right of refusal in a short sale transaction; requiring notice; specifying contents of notice; providing terms of sale and closing; creating a cause of action for failure to provide notice; requiring notice to certain tenants after foreclosure sale; requiring a lender to allow a tenant to purchase the foreclosed property at fair market value; providing terms and conditions of sale; providing for payment of closing costs; creating a cause of action for failure to provide notice; providing that rights created by this act may not be waived in

the lease but may be waived after foreclosure filing; specifying time restrictions on tenants bringing actions for damages; providing for costs and attorneys fees; limiting claims against title to real property; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 327 Community Associations
SPONSOR(S): Robaina
TIED BILLS: None **IDEN./SIM. BILLS:** SB 840

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		Bond	De La Paz
2)	Insurance, Business & Financial Affairs Policy Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Condominium law defines a developer as one "who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business . . . ." Persons who would seek to buy a number of condominium units in a distressed condominium are deterred from doing so because, by being defined as a developer, such persons incur potential warranty liability, liability for prior financial mismanagement of the condominium association, and loss of the ability to control the condominium association.

The bill amends the definition of a developer and creates a new part in the condominium law to limit the liability of a person buying a number of condominium units and to provide for protection of the interests of lenders, unit owners, and the condominium association.

This bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

This bill creates part VII of ch. 718, F.S., consisting of ss. 718.701, 718.702, 718.703, 718.704, 718.705, 718.706, 718.707, and 718.708, F.S. Section 718.701, F.S., provides that part VII of ch. 718, F.S., may be cited as the "Distressed Condominium Relief Act."

Section 718.103(16), F.S., defines a developer as one "who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business . . . ." In essence, the statute creates two classes of developers: those who create the condominium by executing and recording the condominium documents and those who offer condominium units for sale or lease in the ordinary course of business. There are advantages that may accrue with the status as successor developer, including acquisition of certain developer-retained rights under the condominium documents and the ability to control the condominium association by electing or designating a majority of the directors of the condominium association board of directors. On the other hand, there are certain disadvantages, including potential warranty liability, liability for prior financial mismanagement of the condominium association, and loss of the ability to control the condominium association.[1]

The bill creates s. 718.702, F.S., to provide legislative findings and legislative intent. The findings include a finding that potential successor purchasers of condominium units are unwilling to accept the risk of purchase because the potential liabilities inherited from the original developer are imputed to the successor purchaser, including the foreclosing mortgagee.[2] The bill provides a statement of legislative intent that it is public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums.

Definitions

The bill amends the definition of "developer" s. 718.103(16), F.S., to exclude a bulk assignee or a bulk buyer. The bill creates s. 718.703, F.S., to define "bulk assignee" as a person who acquires more than

[1] Schwartz, *The Successor Developer Conundrum in Distressed Condominium Projects*, The Florida Bar Journal, Vol. 83, No. 7, July/August 2009.

[2] For instance, in one case the construction lender foreclosed after the original developer defaulted on a loan. The lender took title to condominium project, completed construction, and, while holding itself out as developer and owner of project, advertised and sold units to purchasers. The court found that the lender became the developer of the project and therefore liable for performance of express representations made to buyers, for patent construction defects in entire condominium project, and for breach of any applicable warranties due to defects in portions of project completed by lender. *Chotka v. Fidelco Growth Investors*, 383 So.2d 1169 (Fla. 2nd DCA 1980).

seven condominium parcels as provided in s. 718.707, F.S., and receives an assignment of some or all of the rights of the developer under specified recorded documents. It also defines "bulk buyer" as a person who acquires more than seven condominium parcels but who does not receive an assignment of developer rights other than the right to conduct sales, leasing, and marketing activities within the condominium.

Changing the definition of "developer" to exclude bulk buyers and bulk assignees will have the effect of limiting the jurisdiction of DBPR over such persons under s. 718.501, F.S. Under s. 718.501(1), F.S., DBPR has full jurisdiction over an association controlled by a developer to enforce any provision of the condominium laws, but has only limited jurisdiction over an association not controlled by a developer.

Assignment and Assumption of Developer Rights

Creates s. 718.704, F.S., relating to the assignment and assumption of developer rights. In general, a bulk assignee assumes all liabilities of the developer. However, a bulk assignee is not liable for:

- Construction warranties, unless related to construction work performed by or on behalf of the bulk assignee.
- Funding converter reserves for a unit not acquired by the bulk assignee.
- Providing converter warranties on any portion of the condo property except as provided in a contract for sale between the assignee and a new purchaser.
- Including in the cumulative audit required at turnover for an audit of income and expenses during the period prior to assignment.
- Any actions taken by the board prior to the time at which the bulk assignee appoints a majority of the board.
- The failure of a prior developer to fund previous assessments or resolve budgetary deficits.

An acquirer of condominium parcels is not considered a bulk assignee or a bulk buyer if the transfer of parcels was done to hinder, delay, or defraud any purchaser, unit owner, or the association, or if the acquiring person or entity is considered an insider.[3]

Development rights may be assigned to a bulk assignee by the developer, by a previous bulk assignee, or by a court of competent jurisdiction acting on behalf of the developer or previous bulk assignee.

- There may be more than one bulk buyer but not more than one bulk assignee within a condominium at any particular time.
- If more than one acquirer receives an assignment of development rights from the same person, the bulk assignee is the acquirer who first records the assignment in the applicable public records.

Transfer to Unit Owner-Controlled Board

The bill creates s. 718.705, F.S., relating to the transfer of control of the condominium board of administration. The bill provides that transfer of condominium units to a bulk assignee is not a transfer that would require turnover. However, units transferred from the bulk assignee count for purposes of determining when turnover is required.

In an ordinary turnover, the developer is required to deliver certain items and documents to the new board of administration that is controlled by unit owners. A bulk assignee is only required, however, to turnover items and documents that the bulk assignee actually has. A bulk assignee has the duty to

[3] The bill references the definition of "insider" at s. 726.102(7), F.S. Chapter 726, F.S., prohibits fraudulent transfers.

attempt to obtain turnover materials from the original developer, and must list materials that the bulk assignee was unable to obtain.

Sale or Lease of Units by a Bulk Assignee or a Bulk Buyer

Under current law, a successor developer may be liable for filing anew all of the condominium documents for regulatory review. The bill creates s. 718.706, F.S., relating to the sale or lease of units by a bulk assignee or a bulk buyer: Prior to the sale or lease of units for a term of more than 5 years, a bulk assignee or a bulk buyer must file the following documents with the Division of Florida Condominiums, Timeshares and Mobile Homes in the Department of Business and Professional Regulation:

- Updated prospectus of offering circular, or a supplement, which must include the form of contract for purchase and sale;
- Updated Frequently Asked Questions and Answers sheet;
- Executed escrow agreement if required under s. 718.202, F.S., relating to sales or reservation deposits prior to closing; and
- Financial information required under s. 718.111(13), F.S. (association financial report for preceding fiscal year), unless the report does not exist for the previous fiscal year prior to acquisition by bulk assignee or accounting records cannot be obtained in good faith, in which case notice requirements must be met.

In addition, a bulk assignee (but not a bulk buyer) must file with the division and provide each purchaser with a disclosure statement that includes, but is not limited to, the following:

- A description of any rights of the developer assigned to the bulk assignee;
- A statement relating to the seller's limited liability for warranties of the developer; and
- If the condominium is a conversion, a statement relating to the seller's limited obligation to fund converter reserves or to provide converter warranties under s. 718.618, F.S., relating to converter reserve accounts.

Both bulk assignees and bulk buyers must comply with the nondeveloper disclosure requirements of s. 718.503(2), F.S., relating to disclosures by unit owners prior to the sale of a unit.

Similar to the restrictions on developers while they are in control of the association, a bulk assignee may not waive reserves, reduce reserves, or use a reserve for a purpose other than set aside for, unless such waiver, reduction or use is approved by a majority of the voting interests not under the control of the developer, bulk assignee, or a bulk buyer.

While in control of the association, a bulk assignee or a bulk buyer must comply with the requirements of s. 718.302, F.S., which section regulates contracts entered into by the association.

A bulk buyer must comply with the requirements of the declaration regarding the transfer of any unit by sale, lease or sublease. No exemptions afforded to a developer regarding the sale, lease, sublease, or transfer of a unit are afforded to a bulk buyer.

B. SECTION DIRECTORY:

Section 1 amends s. 718.103, F.S., amending the definition of "developer."

Section 2 creates Part VII of ch. 718, F.S., relating to distressed condominium relief.

Section 3 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to community associations; amending s. 718.103, F.S.; revising the definition of the term "developer" to exclude a bulk assignee or bulk buyer; creating part VII of ch. 718, F.S., relating to distressed condominium relief; providing a short title; providing legislative findings and intent; defining the terms "bulk assignee" and "bulk buyer"; providing for the assignment of developer rights to and the assumption of developer rights by a bulk assignee; specifying liabilities of bulk assignees and bulk buyers; providing exceptions; providing additional responsibilities of bulk assignees and bulk buyers; authorizing certain entities to assign developer rights to a bulk assignee; limiting the number of bulk assignees at any given time; providing for the transfer of control of a board of administration; providing effects of such transfer on parcels acquired by a bulk assignee; providing obligations of a bulk assignee upon the transfer of control of a board of administration; requiring that a bulk assignee certify certain information in writing; providing for the resolution of a conflict between specified provisions of state law; providing that the failure of a bulk assignee or bulk buyer to comply with specified provisions of state law results in the loss of certain protections and exemptions; requiring that a bulk assignee or bulk buyer file certain information with the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional

Regulation before offering any units for sale or lease in excess of a specified term; requiring that a copy of such information be provided to a prospective purchaser; requiring that certain contracts and disclosure statements contain specified statements; requiring that a bulk assignee or bulk buyer comply with certain disclosure requirements; prohibiting a bulk assignee from taking certain actions on behalf of an association while the bulk assignee is in control of the board of administration of the association and requiring that such bulk assignee comply with certain requirements; requiring that a bulk assignee or bulk buyer comply with certain requirements regarding certain contracts; providing unit owners with specified protections regarding certain contracts; requiring that a bulk buyer comply with certain requirements regarding the transfer of a unit; prohibiting a person from being classified as a bulk assignee or bulk buyer unless condominium parcels were acquired before a specified date; providing for the determination of the date of acquisition of a parcel; providing that the assignment of developer rights to a bulk assignee or bulk buyer does not release a developer from certain liabilities; preserving certain liabilities for certain parties; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (16) of section 718.103, Florida

Statutes, is amended to read:

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

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

(a) An owner or lessee of a condominium or cooperative unit who has acquired the unit for his or her own occupancy; ~~, nor does it include~~

(b) A cooperative association that ~~which~~ creates a condominium by conversion of an existing residential cooperative after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion; ~~.~~

(c) A bulk assignee or bulk buyer as defined in s. 718.703; or

(d) A state, county, or municipal entity ~~is not a developer for any purposes under this act when it is~~ acting as a lessor and not otherwise named as a developer in the declaration of condominium ~~association~~.

Section 2. Part VII of chapter 718, Florida Statutes, consisting of sections 718.701, 718.702, 718.703, 718.704, 718.705, 718.706, 718.707, and 718.708, is created to read:

PART VII

DISTRESSED CONDOMINIUM RELIEF

718.701 Short title.--This part may be cited as the "Distressed Condominium Relief Act."

718.702 Legislative intent.--

(1) The Legislature acknowledges the massive downturn in the condominium market which has transpired throughout the state and the impact of such downturn on developers, lenders, unit owners, and condominium associations. Numerous condominium projects have either failed or are in the process of failing, whereby the condominium has a small percentage of third-party unit owners as compared to the unsold inventory of units. As a result of the inability to find purchasers for this inventory of units, which results in part from the devaluing of real estate in this state, developers are unable to satisfy the requirements of their lenders, leading to defaults on mortgages. Consequently, lenders are faced with the task of finding a solution to the problem in order to be paid for their investments.

(2) The Legislature recognizes that all of the factors listed in this section lead to condominiums becoming distressed, resulting in detriment to the unit owners and the condominium association on account of the resulting shortage of assessment moneys available to support the financial requirements for proper maintenance of the condominium. Such shortage and the resulting lack of proper maintenance further erode property values. The Legislature finds that individuals and entities within Florida and in other states have expressed interest in purchasing unsold inventory in one or more condominium projects, but are reticent to do so because of the potential of accompanying liabilities inherited from the original developer, which are potentially by definition imputed to the successor

purchaser, including a foreclosing mortgagee. This results in the potential purchaser having unknown and unquantifiable risks, and potential successor purchasers are unwilling to accept such risks. The result is that condominium projects stagnate, leaving all parties involved at an impasse without the ability to find a solution.

(3) The Legislature finds and 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 distressed condominiums, and that there is a need for relief from certain provisions of the Florida Condominium Act geared toward enabling economic opportunities within these condominiums for successor purchasers, including foreclosing mortgagees, while at the same time clarifying the ambiguity in the law. Such relief would benefit existing unit owners and condominium associations. The Legislature further finds and declares that this situation cannot be open-ended without potentially prejudicing the rights of unit owners and condominium associations, and thereby declares that the provisions of this part shall be used by purchasers of condominium inventory for a specific and defined period.

718.703 Definitions.--As used in this part, the term:

(1) "Bulk assignee" means a person who:

(a) Acquires more than seven condominium parcels in a single condominium as set forth in s. 718.707; and

(b) Receives an assignment of all or substantially all of the rights of the developer as are set forth in the declaration of condominium or in this chapter by a written instrument

recorded as an exhibit to the deed or as a separate instrument in the public records of the county in which the condominium is located.

(2) "Bulk buyer" means a person who acquires more than seven condominium parcels in a single condominium as set forth in s. 718.707 but who does not receive an assignment of any developer rights other than, at the bulk buyer's option, the right to conduct sales, leasing, and marketing activities within the condominium; the right to be exempt from the payment of working capital contributions to the condominium association arising out of or in connection with the bulk buyer's acquisition of a bulk number of units; and the right to be exempt from any rights of first refusal which may be held by the condominium association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to any third-party purchaser concerning one or more units.

718.704 Assignment of developer rights to and assumption of developer rights by bulk assignee; bulk buyer.--

(1) A bulk assignee shall be deemed to have assumed and is liable for all duties and responsibilities of a developer under the declaration and this chapter, except:

(a) Warranties of a developer under s. 718.203(1) or s. 718.618, except for design, construction, development, or repair work performed by or on behalf of such bulk assignee.

(b) The obligation to:

1. Fund converter reserves under s. 718.618 for a unit that was not acquired by the bulk assignee; or

2. Provide converter warranties on any portion of the

condominium property except as may be expressly provided by the bulk assignee in the contract for purchase and sale executed with a purchaser and pertaining to any design, construction, development, or repair work performed by or on behalf of the bulk assignee.

(c) The requirement to provide the association with a cumulative audit of the association's finances from the date of formation of the condominium association as required by s. 718.301. However, the bulk assignee shall provide an audit for the period for which the bulk assignee elects a majority of the members of the board of administration.

(d) Any liability arising out of or in connection with actions taken by the board of administration or the developer-appointed directors before the bulk assignee elects a majority of the members of the board of administration.

(e) Any liability for or arising out of the developer's failure to fund previous assessments or to resolve budgetary deficits in relation to a developer's right to guarantee assessments, except as otherwise provided in subsection (2).

Further, the bulk assignee is responsible for delivering documents and materials in accordance with s. 718.705(3). A bulk assignee may expressly assume some or all of the obligations of the developer described in paragraphs (a)-(e).

(2) A bulk assignee receiving the assignment of the rights of the developer to guarantee the level of assessments and fund budgetary deficits pursuant to s. 718.116 shall be deemed to have assumed and is liable for all obligations of the developer

with respect to such guarantee, including any applicable funding of reserves to the extent required by law, for as long as the guarantee remains in effect. A bulk assignee not receiving an assignment of the right of the developer to guarantee the level of assessments and fund budgetary deficits pursuant to s. 718.116 or a bulk buyer is not deemed to have assumed and is not liable for the obligations of the developer with respect to such guarantee, but is responsible for payment of assessments in the same manner as all other owners of condominium parcels.

(3) A bulk buyer is liable for the duties and responsibilities of the developer under the declaration and this chapter only to the extent provided in this part, together with any other duties or responsibilities of the developer expressly assumed in writing by the bulk buyer.

(4) An acquirer of condominium parcels is not considered a bulk assignee or a bulk buyer if the transfer to such acquirer was made prior to the effective date of this Distressed Condominium Relief Act or was made with the intent to hinder, delay, or defraud any purchaser, unit owner, or the association, or if the acquirer is a person who would constitute an insider under s. 726.102(7).

(5) An assignment of developer rights to a bulk assignee may be made by the developer, a previous bulk assignee, or a court of competent jurisdiction acting on behalf of the developer or the previous bulk assignee. At any particular time, there may be no more than one bulk assignee within a condominium, but there may be more than one bulk buyer. If more than one acquirer of condominium parcels in the same condominium

receives an assignment of developer rights from the same person, the bulk assignee is the acquirer whose instrument of assignment is recorded first in applicable public records.

718.705 Board of administration; transfer of control.--

(1) For purposes of determining the timing for transfer of control of the board of administration of the association to unit owners other than the developer under s. 718.301(1)(a) and (b), if a bulk assignee is entitled to elect a majority of the members of the board, any condominium parcel acquired by the bulk assignee shall not be deemed to be conveyed to a purchaser, or to be owned by an owner other than the developer, until such condominium parcel is conveyed to an owner who is not a bulk assignee.

(2) Unless control of the board of administration of the association has already been relinquished pursuant to s. 718.301(1), the bulk assignee is obligated to relinquish control of the association in accordance with s. 718.301(1) or (2) and this part as if the bulk assignee were the developer.

(3) When a bulk assignee relinquishes control of the board of administration, the bulk assignee shall deliver all of those items required by s. 718.301(4). However, the bulk assignee is not required to deliver items and documents not in the possession of the bulk assignee during the period during which the bulk assignee was entitled to elect not less than a majority of the members of the board of administration. In conjunction with the acquisition of condominium parcels, a bulk assignee shall undertake a good faith effort to obtain the documents and materials required to be provided to the association pursuant to

s. 718.301(4). To the extent the bulk assignee is not able to obtain all of such documents and materials, the bulk assignee shall certify in writing to the association the names or descriptions of the documents and materials that were not obtainable by the bulk assignee. Delivery of the certificate relieves the bulk assignee of responsibility for the delivery of the documents and materials referenced in the certificate as otherwise required under ss. 718.112 and 718.301 and this part. The responsibility of the bulk assignee for the audit required by s. 718.301(4) shall commence as of the date on which the bulk assignee elected a majority of the members of the board of administration.

(4) If a conflict arises between the provisions or application of this section and s. 718.301, this section shall prevail.

(5) Failure of a bulk assignee or bulk buyer to substantially comply with all the requirements contained in this part shall result in the loss of all protections or exemptions provided under this part.

718.706 Specific provisions pertaining to offering of units by a bulk assignee or bulk buyer.--

(1) Before offering any units for sale or for lease for a term exceeding 5 years, a bulk assignee or a bulk buyer shall file the following documents with the division and provide such documents to a prospective purchaser or tenant:

(a) An updated prospectus or offering circular, or a supplement to the prospectus or offering circular, filed by the creating developer prepared in accordance with s. 718.504, which

shall include the form of contract for purchase and sale in compliance with s. 718.503(1)(a);

(b) An updated Frequently Asked Questions and Answers sheet;

(c) The executed escrow agreement if required under s. 718.202; and

(d) The financial information required by s. 718.111(13). However, if a financial information report does not exist for the fiscal year before acquisition of title by the bulk assignee or bulk buyer, or accounting records cannot be obtained in good faith by the bulk assignee or the bulk buyer which would permit preparation of the required financial information report, the bulk assignee or bulk buyer is excused from the requirement of this paragraph. However, the bulk assignee or bulk buyer must include in the purchase contract the following statement in conspicuous type:

THE FINANCIAL INFORMATION REPORT REQUIRED UNDER SECTION 718.111(13), FLORIDA STATUTES, FOR THE IMMEDIATELY PRECEDING FISCAL YEAR OF THE ASSOCIATION IS NOT AVAILABLE OR CANNOT BE CREATED BY THE SELLER AS A RESULT OF INSUFFICIENT ACCOUNTING RECORDS OF THE ASSOCIATION.

(2) Before offering any units for sale or for lease for a term exceeding 5 years, a bulk assignee shall file with the division and provide to a prospective purchaser a disclosure statement that must include, but is not limited to:

(a) A description of any rights of the developer which have been assigned to the bulk assignee;

(b) The following statement in conspicuous type:

THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE DEVELOPER UNDER SECTION 718.203(1) OR SECTION 718.618, FLORIDA STATUTES, AS APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF OF SELLER.

(c) If the condominium is a conversion subject to part VI, the following statement in conspicuous type:

THE SELLER HAS NO OBLIGATION TO FUND CONVERTER RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER SECTION 718.618, FLORIDA STATUTES, ON ANY PORTION OF THE CONDOMINIUM PROPERTY EXCEPT AS MAY BE EXPRESSLY REQUIRED OF THE SELLER IN THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE SELLER AND THE DEVELOPER AND PERTAINING TO ANY DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF OF THE SELLER.

(3) In addition to the requirements set forth in subsection (1), a bulk assignee or bulk buyer must comply with the nondeveloper disclosure requirements set forth in s. 718.503(2) before offering any units for sale or for lease for a term exceeding 5 years.

(4) While in control of the board of administration of the association, a bulk assignee may not authorize, on behalf of the association:

(a) The waiver of reserves or the reduction of funding of the reserves in accordance with s. 718.112(2)(f)2., unless approved by a majority of the voting interests not controlled by the developer, bulk assignee, and bulk buyer; or

(b) The use of reserve expenditures for other purposes in accordance with s. 718.112(2)(f)3., unless approved by a majority of the voting interests not controlled by the developer, bulk assignee, and bulk buyer.

(5) A bulk assignee or bulk buyer shall comply with all the requirements of s. 718.302 regarding any contracts entered into by the association during the period the bulk assignee or bulk buyer maintains control of the board of administration. Unit owners shall be afforded all the protections contained in s. 718.302 regarding agreements entered into by the association before unit owners other than the developer, bulk assignee, or bulk buyer elected a majority of the board of administration.

(6) A bulk buyer shall comply with the requirements contained in the declaration regarding any transfer of a unit, including sales, leases, and subleases. A bulk buyer is not entitled to any exemptions afforded a developer or successor developer under this chapter regarding any transfer of a unit, including sales, leases, or subleases.

718.707 Time limitation for classification as bulk assignee or bulk buyer.--A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless

the condominium parcels were acquired before July 1, 2012. The date of such acquisition shall be determined by the date of recording of a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located or by the date of issuance of a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

718.708 Liability of developers and others.--An assignment of developer rights to a bulk assignee or bulk buyer does not release the creating developer from any liabilities under the declaration or this chapter. This part does not limit the liability of the creating developer for claims brought by unit owners, bulk assignees, or bulk buyers for violations of this chapter by the creating developer, unless specifically excluded in this part. Nothing contained within this part waives, releases, compromises, or limits the liability of contractors, subcontractors, materialmen, manufacturers, architects, engineers, or any participant in the design or construction of a condominium for any claim brought by an association, unit owners, bulk assignees, or bulk buyers arising from the design of the condominium, construction defects, misrepresentations associated with condominium property, or violations of this chapter, unless specifically excluded in this part.

Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 361 Trust Administration
SPONSOR(S): Wood
TIED BILLS: None **IDEN./SIM. BILLS:** SB 998

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice & Courts Policy Committee		Bond	De La Paz
2) Policy Council			
3) Criminal & Civil Justice Policy Council			
4)			
5)			

SUMMARY ANALYSIS

A trust is a legal entity created by a settlor for the benefit of one or more beneficiaries. Trusts are highly regulated, and are complicated by their relationship to federal tax laws and probate laws. This bill amends trust law, and probate law related to trusts, to:

- Specify how a trust may be assessed the expenses and obligations of the estate of the settlor.
- Provide that a court may deny compensation to an expert testifying as to reasonable compensation.
- Increase the amount of property that may protected from creditors in certain trusts.

This bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

A trust is a legal entity created by a settlor[1] for the benefit of one or more beneficiaries. Trusts are highly regulated, and are complicated by their relationship to federal tax laws and probate laws. This bill amends trust law, and probate law related to trusts.

Apportionment of Expenses and Obligations of an Estate

Section 733.607(2), F.S., provides that, if a decedent's probate estate assets are insufficient to pay expenses of administering the estate and other obligations, the probate estate can request that the insufficiency be paid from the decedent's revocable trust, if one exists. Similarly, s. 733.707(3), F.S., provides that a probate estate may require a decedent's revocable trust to pay expenses and obligations of the probate estate. Section 736.05053, F.S., requires the trustee of a trust to comply with the requirement to pay expenses and obligations of the probate estate.

It is unclear from which portion of a revocable trust the payments required by ss. 733.607 and 733.707, F.S., are to be paid from. The probate law, at s. 733.805, F.S., provides a means to determine which part of an estate is required to pay for the expenses and obligations of the probate estate (known as "abatement").

This bill amends ss. 733.607(2) and 733.707(3), F.S., to specifically reference the requirement in s. 736.05053, F.S., and to provide that the abatement provisions of the probate code at s. 733.805, F.S. apply to a revocable trust when that trust must pay expenses and obligations of a probate estate. This bill also amends s. 736.05053, F.S., to specifically provide that abatement applies to a revocable trust as it applies to the probate estate. These changes conform to the provision in s. 733.805(4), F.S., that provides that a decedent's will and revocable trust be construed as one common instrument.

Compensation of Trust Professionals

The compensation of any person employed by a trust, including the trustee and professionals employed by the trustee (usually accountants and lawyers), is subject to court supervision and review. Section 736.0206(1), F.S., requires that all interested parties must be given notice of an application for compensation. This bill removes the statutory requirement that all interested persons be given notice

[1] The settlor contributes the property to be managed and eventually distributed by the trust. The settlor also creates the trust instrument that names the beneficiaries of the trust and provides for management of the trust.

of an application for compensation. Current court rules require notice to all interested parties of all matters[2], including an application for compensation of any person.[3] Unless the court rules are changed, this statutory change will have no effect.

In general, the court is not required to obtain expert testimony to justify a request for compensation. If a party objects to compensation, one or more of the parties may employ an expert witness to testify as to the reasonableness of the compensation. If an interested party objects to compensation of any person, s. 736.0206(5), F.S., requires the trust to pay an expert witness fee should an expert testify. This bill amends s. 736.0206(5), F.S., to provide that the court does not have to award compensation to an expert witness if the testimony did not assist the court.

This bill also repeals the attorney's fees provisions at ss. 736.1007(7), and 736.1007(9), F.S., that are duplicative of the provisions regarding compensation of any person at s. 736.0206, F.S.

Creditor Claims Against Trust Assets

Traditionally, self-settled trusts have been treated harshly when it comes to creditors' rights. This follows from a widely accepted public policy maxim that an individual should not be permitted to put property in a trust for his or her own benefit and thereby escape creditor claims. Section 736.0505(1), F.S., provides that, whether or not a trust includes a spendthrift provision:

- While the trust is revocable, the trust property is subject to the claims of the settlor's creditors; and
- In the case of an irrevocable trust, a settlor's creditor or assignee may reach the maximum that can be distributed to or for the benefit of the settlor. Notwithstanding this ability, the assets of the trust are not subject to the creditor's or assignee's claims merely because the trustee possesses the power to pay tax liabilities of the settlor.

Additionally, s. 736.0505(2)(a), F.S., provides that a person holding a power of withdrawal (the right to demand money from the trust) is treated the same as a settlor of the trust for purposes of the claims of creditors of the person holding that power. While the power of withdrawal is available, the full amount subject to withdrawal may be garnished by a creditor of a person holding the power. Upon the lapse, release, or waiver of the power of withdrawal, however, s. 736.0505(2)(b), F.S., provides that a creditor may only claim the amount that could have been withdrawn that was in excess of the greater of the federal gift tax exclusions.

Increase in Protected Amount Related to Gift Tax Exclusion

The United States tax code imposes an estate tax on transfers of property upon the death of an individual. The most obvious tax avoidance scheme to an estate tax is for a person to, while alive, give his or her property as gifts to the future beneficiaries. The intent of the gift tax law is to impose a tax on such gifts that is roughly equal to the future estate tax, thereby discouraging tax avoidance behavior.

The creation and funding of a trust is a gift to the beneficiaries. Trusts are commonly used in estate planning, and persons of sufficient wealth craft such trusts in a manner intended to minimize tax consequences. Section 736.0505(2)(b)2., F.S., references 26 U.S.C. s. 2503(b), which contains the most commonly used and commonly know exclusion to the gift tax law. That section excludes from the gift tax gifts to any one individual in a calendar year that are less than the exclusion amount. For a long time, that amount was fixed at $10,000. The sum has been inflation adjusted, and is currently $13,000. It applies to a gift from one individual to another.

[2] Florida Probate Rule 5.041(a).
[3] Florida Probate Rule 5.355.

This bill amends the reference to the gift tax exclusion at 26 U.S.C. s. 2503(b) to provide that, where the donor was married at the time of the transfer to which the power of withdrawal applies, the assumption is that both spouses made a gift and the protected amount is twice that of an individual donor.

Protected Amounts Related to Spousal Trusts

It is common in estate tax planning to create certain trusts between spouses to minimize tax consequences. The bill references 26 U.S.C. s. 2523(e) and 26 U.S.C. s. 2523(f). 26 U.S.C. 2523 relates to gift tax deductions applicable to transfers between spouses. A trust described under section 2523(e) is a trust that is a life estate with a power of appointment in the donee spouse. The trust must pay all of the interest or earnings to the donee spouse to apply. Section 2523(f) relates to an election to treat a trust as a QTIP trust (qualified terminable interest property trust). A QTIP trust is a means by which a spouse can make a lifetime gift to the other spouse made for the purpose of maximizing marital deductions applicable to the estate and gift taxes, yet still maintain control of the assets in the trust, provided the donee spouse is entitled to the earnings of the trust.

Many estate planners recommend QTIP trusts to allow for the full use of the donee spouse's estate tax exemption without compromising the ability of the donor to control the disposition of the trust assets after the death of the donee spouse. However, it is argued that retaining that power of appointment makes the trust subject to continuing claims of creditors of the donor. For this reason, some donors have been unwilling to create a QTIP trust under Florida law, preferring to move such trusts to states where creditor protection has been created by statute.[4]

This bill adds subsection (3) to s. 736.0505, F.S., related to spousal trusts. It provides that, as to trusts under 26 U.S.C. s. 2523(e) and 26 U.S.C. s. 2523(f), upon the death of the settlor's spouse, the assets are considered to have been contributed by the settlor's spouse and not by the settlor. As the form of such trusts make then non-revocable as of the death of a spouse, this appears to have the effect of allowing certain self-settled trusts to protect assets from creditors upon the death of a spouse. The bill further provides, however, that this protection does not apply if the funding of the trust was a fraudulent conveyance, as such is defined in the fraudulent conveyance law at s. 726.105, F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 733.607, F.S., related to possession of an estate.

Section 2 amends s. 733.707, F.S., related to the order of payment of expenses and obligations of an estate.

Section 3 amends s. 736.0206, F.S., related to compensation of professionals employed by a trust.

Section 4 amends s. 736.0505, F.S., related to creditor claims against the settlor of a trust.

Section 5 amends s. 736.05053, F.S., related to a trustee's duty to pay expenses and obligations of a settlor's estate.

Section 6 amends s. 736.1007, F.S., related to trustee's attorney's fees.

Section 7 provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[4] Real Property, Probate and Trust Law Section of the Florida Bar, *White Paper on Proposed Revision to Florida Statutes Section 736.0505*, undated, received on December 30, 2009. On file with committee staff.

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to trust administration; amending s. 733.607, F.S.; limiting a personal representative's entitlement to payment from a trust of certain estate expenses and obligations; specifying application of certain criteria in making certain payments from a trust; amending s. 733.707, F.S.; specifying application of additional provisions to liability for certain estate expense and obligation payments from a trust; amending s. 736.0206, F.S.; deleting certain notice requirements relating to court review of a trustee's employment of certain persons; authorizing the award of expert witness fees from trust assets rather than requiring the award of such fees; providing a limitation; amending s. 736.0505, F.S.; revising a value criterion for determining the extent of treating the holder of a power of withdrawal as the settlor of a trust; providing criteria for determining who contributed certain trust assets under certain circumstances; amending s. 736.05053, F.S.; requiring application of priorities for pro rata abatement of nonresiduary trust dispositions together with nonresiduary devises; amending s. 736.1007, F.S.; deleting authority for a court to determine an attorney's compensation; deleting certain expert testimony and fee payment provisions; deleting requirements for certain court compensation determination proceedings to be part of a trust administration process and for court determination

and payment of certain estate costs and fees from trust assets; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 733.607, Florida Statutes, is amended to read:

733.607 Possession of estate.—

(2) If, after providing for statutory entitlements and all devises other than residuary devises, the assets of the decedent's estate are insufficient to pay the expenses of the administration and obligations of the decedent's estate, the personal representative is entitled to payment from the trustee of a trust described in s. 733.707(3), in the amount the personal representative certifies in writing to be required to satisfy the insufficiency, subject to the exclusions and preferences under s. 736.05053. The provisions of s. 733.805 shall apply in determining the amount of any payment required by this section.

Section 2. Subsection (3) of section 733.707, Florida Statutes, is amended to read:

733.707 Order of payment of expenses and obligations.—

(3) Any portion of a trust with respect to which a decedent who is the grantor has at the decedent's death a right of revocation, as defined in paragraph (e), either alone or in conjunction with any other person, is liable for the expenses of the administration and obligations of the decedent's estate to

the extent the decedent's estate is insufficient to pay them as provided in ss. ~~s.~~ 733.607(2) and 736.05053.

(a) For purposes of this subsection, any trusts established as part of, and all payments from, either an employee annuity described in s. 403 of the Internal Revenue Code of 1986, as amended, an Individual Retirement Account, as described in s. 408 of the Internal Revenue Code of 1986, as amended, a Keogh (HR-10) Plan, or a retirement or other plan established by a corporation which is qualified under s. 401 of the Internal Revenue Code of 1986, as amended, shall not be considered a trust over which the decedent has a right of revocation.

(b) For purposes of this subsection, any trust described in s. 664 of the Internal Revenue Code of 1986, as amended, shall not be considered a trust over which the decedent has a right of revocation.

(c) This subsection shall not impair any rights an individual has under a qualified domestic relations order as that term is defined in s. 414(p) of the Internal Revenue Code of 1986, as amended.

(d) For purposes of this subsection, property held or received by a trust to the extent that the property would not have been subject to claims against the decedent's estate if it had been paid directly to a trust created under the decedent's will or other than to the decedent's estate, or assets received from any trust other than a trust described in this subsection, shall not be deemed assets of the trust available to the decedent's estate.

(e) For purposes of this subsection, a "right of revocation" is a power retained by the decedent, held in any capacity, to:

1. Amend or revoke the trust and revest the principal of the trust in the decedent; or

2. Withdraw or appoint the principal of the trust to or for the decedent's benefit.

Section 3. Subsections (1), (5), (6), and (7) of section 736.0206, Florida Statutes, are amended to read:

736.0206 Proceedings for review of employment of agents and review of compensation of trustee and employees of trust.—

(1) ~~After notice to all interested persons,~~ The court may review the propriety of the employment by a trustee of any person, including any attorney, auditor, investment adviser, or other specialized agent or assistant, and the reasonableness of any compensation paid to that person or to the trustee.

(5) The court may determine reasonable compensation for a trustee or any person employed by a trustee without receiving expert testimony. Any party may offer expert testimony after notice to interested persons. If expert testimony is offered, a reasonable expert witness fee <u>may</u> ~~shall~~ be awarded by the court and paid from the assets of the trust <u>unless the court finds that the expert testimony did not assist the court</u>. The court shall direct from which part of the trust assets the fee shall be paid.

~~(6) Persons given notice as provided in this section shall be bound by all orders entered on the complaint.~~

(6) ~~(7)~~ In a proceeding pursuant to subsection (2), the petitioner may serve formal notice as provided in the Florida Probate Rules, and such notice shall be sufficient for the court to acquire jurisdiction over the person receiving the notice to the extent of the person's interest in the trust.

Section 4. Paragraph (b) of subsection (2) of section 736.0505, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

736.0505 Creditors' claims against settlor.—

(2) For purposes of this section:

(b) Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in:

1. Section 2041(b)(2) or s. 2514(e); or

2. Section 2503(b) and, if the donor was married at the time of the transfer to which the power of withdrawal applies, twice the amount specified in s. 2503(b),

of the Internal Revenue Code of 1986, as amended.

(3) Subject to the provisions of s. 726.105, for purposes of this section, the assets in:

(a) A trust described in s. 2523(e) of the Internal Revenue Code of 1986, as amended, or a trust for which the election described in s. 2523(f) of the Internal Revenue Code of 1986, as amended, has been made; and

(b) Another trust, to the extent that the assets in the other trust are attributable to a trust described in paragraph (a),

shall, after the death of the settlor's spouse, be deemed to have been contributed by the settlor's spouse and not by the settlor.

Section 5. Subsection (5) is added to section 736.05053, Florida Statutes, to read:

736.05053 Trustee's duty to pay expenses and obligations of settlor's estate.—

(5) Nonresiduary trust dispositions shall abate pro rata with nonresiduary devises pursuant to the priorities specified in this section and s. 733.805, determined as if the beneficiaries of the will and trust, other than the estate or trust itself, were taking under a common instrument.

Section 6. Subsections (7) through (10) of section 736.1007, Florida Statutes, are amended to read:

736.1007 Trustee's attorney's fees.—

~~(7) The court may determine reasonable attorney's compensation without receiving expert testimony. Any party may offer expert testimony after notice to interested persons. If expert testimony is offered, an expert witness fee may be awarded by the court and paid from the assets of the trust. The court shall direct from what part of the trust the fee is to be paid.~~

(7) ~~(8)~~ If a separate written agreement regarding compensation exists between the attorney and the settlor, the

attorney shall furnish a copy to the trustee prior to commencement of employment and, if employed, shall promptly file and serve a copy on all interested persons. A separate agreement or a provision in the trust suggesting or directing the trustee to retain a specific attorney does not obligate the trustee to employ the attorney or obligate the attorney to accept the representation but, if the attorney who is a party to the agreement or who drafted the trust is employed, the compensation paid shall not exceed the compensation provided in the agreement.

~~(9) Court proceedings to determine compensation, if required, are a part of the trust administration process, and the costs, including fees for the trustee's attorney, shall be determined by the court and paid from the assets of the trust unless the court finds the attorney's fees request to be substantially unreasonable. The court shall direct from what part of the trust the fees are to be paid.~~

(8) ~~(10)~~ As used in this section, the term "initial trust administration" means administration of a revocable trust during the period that begins with the death of the settlor and ends on the final distribution of trust assets outright or to continuing trusts created under the trust agreement but, if an estate tax return is required, not until after issuance of an estate tax closing letter or other evidence of termination of the estate tax proceeding. This initial period is not intended to include continued regular administration of the trust.

Section 7. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 409 Garnishment
SPONSOR(S): Brisé and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 492

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		DeZego	De La Paz
2)	Health Care Services Policy Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

A garnishment is a judicial proceeding in which a creditor asks the court to order a third party who is indebted to the debtor to turn over to the creditor any of the debtor's property, such as wages or bank accounts, held by that third party. In Florida, a person who provides more than half the support for a child or other dependent (head of family) whose disposable earnings are less than or equal to $500 a week ($29,000 a year) is exempt from wage garnishment. A head of family whose disposable earnings are greater than $500 a week is also exempt from wage garnishment, unless he or she waives the exemption in writing.

This bill increases the amount of disposable earnings a head of family can make and still be exempt from garnishment of wages with or without a written waiver from $500 to $750 a week ($39,000 a year). In addition, this bill provides specific requirements for the written waiver of garnishment to be effective and example language for the format of the waiver.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

A garnishment is a judicial proceeding in which a creditor asks the court to order a third party who is indebted to the debtor to turn over to the creditor any of the debtor's property, such as wages or bank accounts, held by that third party.[1] One of the most common types of garnishment is wage garnishment, where an employer is required to deduct money from an employee's wages in accordance with a court order.

In Florida, a head of family whose disposable earnings[2] are less than or equal to $500 a week ($29,000 a year) is exempt from wage garnishment.[3] In addition, a head of family whose disposable earnings are greater than $500 a week is exempt from wage garnishment unless he or she has agreed otherwise in writing.[4] Florida law defines a head of family as a person who provides more than half the support for a child or other dependent. In a two income household, only one person may be considered the head of family. The $500 amount for disposable earnings was created by statute in 1993 and has not been increased since that time.[5] With inflation, the corresponding amount today would be $748.55.[6]

Section 77.041, F.S., streamlines procedures in garnishment proceedings against individuals and requires the Clerk of Court to attach a notice to writs of garnishment along with a "Claim of Exemption and Request for Hearing" form. This form contains eleven authorized exemptions, including head of family, as well as a space to list any other exemptions provided by law. The burden is on the debtor to prove entitlement to any exemption.[7]

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[1] Black's Law Dictionary 300 (2d pocket ed. 2001).
[2] Section 222.11(1)b, F.S., provides that "disposable earnings" are the part of the earnings of any head of family remaining after the deduction from those earnings of any amounts required by law to be withheld. Section 222.11(1)a, F.S., provides that "earnings" represent monies paid or payable in a sum certain, as a result of personal services or of labor performed.
[3] Section 222.11(2)a, F.S.
[4] Section 222.11(2)b, F.S.
[5] *See* 1993 Fla. Laws ch. 256
[6] *See* http://www.bls.gov/data/inflation_calculator.htm
[7] *In re Harrison,* 216 B.R. 451, 453 (So.Dis.Fla.1997) (citing *In re Parker,* 147 B.R. 810 (M.D.Fla.1992)); *Brock v. Westport Recovery Corp.,* 832 So.2d 209, 211 (Fla. 4th DCA 2002)

If a person's wages are attached or garnished, they cannot exceed the amount allowed under the Consumer Credit Protection Act.[8] This act provides that garnishment generally cannot exceed the lesser of twenty-five per cent of a person's disposable earnings for that week, or the amount by which his or her disposable earnings for that week exceed thirty times the Federal minimum hourly wage in effect at the time the earnings are payable.[9] The current Federal minimum hourly wage is $7.25.[10]

Effect of Bill

This bill increases the amount of disposable earnings a head of family may earn and still be exempted from garnishment of wages from $500 a week to $750 a week, which is consistent with the rate of inflation.[11] Therefore, a person who earns more than half the support for a child or other dependent whose disposable earnings are equal to or less than $39,000 a year is exempt from wage garnishment under this bill.

This bill also provides that if the head of family's disposable earnings are greater than $750 a week, instead of the current $500 a week, then he or she is exempt from garnishment unless the exemption is waived in writing. In addition, this bill adds requirements for the waiver to be valid. Specifically, this bill requires the waiver to be:

- In the same language as the contract or agreement to which the waiver relates,
- In a separate document that is attached to the contract or the agreement, and
- Written in at least size 14 font.

The waiver must be in substantially the same format as the language provided in the bill, which consists of a statement that must be signed by both the consumer and the creditor. The statement acknowledges that a person who provides more than one-half of the support for a child or other dependent is exempt in full or part from garnishment under Florida law and that this exemption may only be waived by signing the document.

B. SECTION DIRECTORY:

Section 1 amends s. 222.11, F.S., relating to exemption of wages from garnishment.

Section 2 provides an effective date for this bill of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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[8] Section 222.11(2)c, F.S.

[9] *See* Consumer Credit Protection Act, 15 USC. S. 1673. The restrictions regarding maximum allowable garnishment do not apply to any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review; any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11; or any debt due for any State or Federal tax.

[10] *See* http://www.dol.gov/dol/topic/wages/minimumwage.htm

[11] The exemption amount of $500 per week was last updated in 1993. *See* http://www.bls.gov/data/inflation_calculator.htm

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears to have an indeterminate positive fiscal impact on consumers due to the increase in persons who would qualify for a waiver of garnishment of wages under this bill. The bill also appears to have a corresponding negative fiscal impact on creditors.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to garnishment; amending s. 222.11, F.S.; increasing the amount of wages of a head of family that is exempt from garnishment; providing a form that must be used for an agreement to waive the exemption from garnishment; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 222.11, Florida Statutes, is amended to read:

222.11 Exemption of wages from garnishment.—

(2)(a) All of the disposable earnings of a head of family whose disposable earnings are less than or equal to $750 ~~$500~~ a week are exempt from attachment or garnishment.

(b) Disposable earnings of a head of a family, which are greater than $750 ~~$500~~ a week, may not be attached or garnished unless such person has agreed otherwise in writing. The agreement to waive the protection provided by this paragraph must:

1. Be in the same language as the contract or agreement to which the waiver relates.

2. Be contained in a separate document attached to the contract or agreement.

3. Be in substantially the following form in at least 14-point type:

IF YOU PROVIDE MORE THAN ONE-HALF OF THE SUPPORT FOR A

CHILD OR OTHER DEPENDENT, ALL OR PART OF YOUR INCOME IS EXEMPT FROM GARNISHMENT UNDER FLORIDA LAW. YOU CAN WAIVE THIS PROTECTION ONLY BY SIGNING THIS DOCUMENT. BY SIGNING BELOW, YOU AGREE TO WAIVE THE PROTECTION FROM GARNISHMENT.

...(Consumer's Signature)... ...(Date Signed)...

I have fully explained this document to the consumer.

...(Creditor's Signature)... ...(Date Signed)...

~~In no event shall~~ The amount attached or garnished may not exceed the amount allowed under the Consumer Credit Protection Act, 15 U.S.C. s. 1673.

(c) Disposable earnings of a person other than a head of family may not be attached or garnished in excess of the amount allowed under the Consumer Credit Protection Act, 15 U.S.C. s. 1673.

Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 437 Contingency Fee Agreements Between the Department of Legal Affairs and Private Attorneys
SPONSOR(S): Eisnaugle
TIED BILLS: None **IDEN./SIM. BILLS:** SB 712

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		DeZego	De la Paz
2)	Criminal & Civil Justice Policy Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

This bill creates s. 16.0155, F.S., which prohibits the Department of Legal Affairs from entering into a contingency fee contract with a private attorney unless the Attorney General (AG) makes a written determination before entering such contract that contingency fee representation is both cost-effective and in the public interest. This bill requires the AG to request proposals from private attorneys to represent the Department on a contingency fee basis and requires attorneys to keep time records in increments of no greater than one-tenth of an hour. Notwithstanding current law, this bill prohibits contingency fee contracts entered into by the Department to exceed an aggregate contingency fee in specified amounts. Lastly, this bill requires copies of executed contingency fee agreements, as well as payment of contingency fees, to be posted on the Department's website.

This bill appears to have an insignificant fiscal impact.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Attorney General Transparency Code

In September 2007, the American Tort Reform Association (ATRA) proposed new voluntary standards designed to improve government transparency and accountability when state attorneys general hire outside counsel to litigate on behalf of state residents.[1] ATRA proposed various changes including contracts with vendors being posted on the Internet for public inspection, outside counsel on a contingent fee basis disclosing detailed information regarding the hours worked and fees charged, and placing all monies recovered by the Attorney General (AG) into the state treasury for appropriation by the Legislature unless stipulated otherwise.

The Attorney General's Ability to Contract for Private Attorney Services

Current Law

The Department of Legal Affairs provides civil representation and legal services on behalf of the state. Section 287.059, F.S., provides that every state agency[2] is required to obtain the written approval of the AG as a prerequisite to contracting for private attorney services with specified exceptions, most notably the Executive Office of the Governor.[3]

When an agency requests approval for the use of private attorney services, the agency must first offer to contract with the Department of Legal Affairs for such attorney services at a cost pursuant to mutual agreement.[4] The AG can, by rule, ask the agency to provide the following information:

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[1] *See* http://www.atra.org/newsroom/releases.php?id=8168. Last accessed on December 7, 2009.

[2] Section 287.059(1), F.S., defines "agency" or "state agency" as state officers, department, boards, commissions, divisions, bureaus, councils, and units of organization, however designated, of the executive branch of government, community and junior colleges, and multicounty special districts exclusive of those created by interlocal agreement or which have elected governing boards.

[3] Section 287.059(2), F.S., provides that written approval from the AG is not required for private attorney services procured by the Executive Office of the Governor, offices under the jurisdiction of the Financial Services Commission, any department under the exclusive jurisdiction of a single Cabinet officer, provided by legal services organizations to indigent clients, necessary to represent the state in litigation involving the State Risk Management Trust Fund, procured by the university and college boards of trustees, procured by community and junior colleges, or procured by the Board of Trustees for the Florida School for the Deaf and the Blind.

[4] Section 287.059(3), F.S.

- The nature of the services to be provided and the issues involved;
- The need for use of private attorneys rather than staff attorneys;
- The criteria by which the agency selected the private attorney;
- Competitive fees for similar attorney services;
- The agency's analysis estimating the number of hours, the costs, the total contract amount, and a risk or cost-benefit analysis;
- Which partners, associates, paralegals, research associates, or other personnel will be used and how their time will be billed; and
- Any other information which the AG deems appropriate for the proper evaluation of the need for private attorney services.

Agencies are required to use the following statutory criteria when selecting outside firms:

- The magnitude or complexity of the case;
- The firm's ratings and certifications;
- The firm's minority status;
- The firm's physical proximity to the case and the agency;
- The firm's prior experience with the agency;
- The firm's prior experience with similar cases or issues;
- The firm's billing methodology and proposed rate;
- The firm's current or past adversarial position, or conflict of interest, with the agency; and
- The firm's willingness to use resources of the agency to maximize costs.[5]

If the AG declines to provide the requested services through the Department of Legal Affairs, then the AG's written approval must include a statement that the services requested cannot be provided by the office of the Attorney General or that such private attorney services are cost-effective in the opinion of the AG. Once written approval has been received from the AG, the general counsel is required to review the form and legality of the contract and indicate his or her approval by initialing the contract. The contract must also be signed and approved by the agency head, who must maintain custody of the contract.[6]

All agencies are required to use the standard fee schedule when contracting for private attorney services,[7] which schedule has been set by the Department of Legal Affairs in administrative rule. Rule 2-37.030, F.A.C., generally provides for the following fee schedule:

- Specialized attorney[8] services may be billed up to $250 per billable hour;[9]
- All other attorney services may be billed up to $200 per billable hour;
- All paralegal, legal assistant, law clerk, and research assistant services may be billed at $40 per billable hour;
- Costs for exhibits, transcripts, and witness fees are not considered a part of the billable hour, but will be reimbursed based upon documented third party vendor charges provided prior authorization is given by the agency;
- Expenses for travel are limited to terms and rates established in s. 112.061, F.S.; and
- Non-routine[10] office overhead will be reimbursed based upon documented third party vendor charges provided they are justified to the agency.

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[5] Section 287.059(10), F.S.
[6] Sections 287.059(4) and (5), F.S.
[7] Section 287.059(8), F.S.
[8] Rule 2-37.030(1), F.A.C., limits specialized attorney services to admiralty, copyright, patent, trademark, international communications, media, and bond and securities law.
[9] Rule 2-37.030(4), F.A.C., defines "billable hour" as the actual time spent providing attorney services to the agency measured in 6 to 10 minute intervals. Office overhead is included in the billable hour and not separately compensated.
[10] Rules 2-37.030(4), F.A.C., provides that non-routine overhead includes expenses such as long distance phone charges, facsimile transmissions, bulk mailings, bulk third party copying and computer-assisted legal research.

Alternate billing methodologies, including contingency fee contracts, may be used when it is deemed the most cost-effective or appropriate billing methodology.[11] Any agency wishing to exceed the standard fee schedule must demonstrate necessity to the AG through a statement of waiver which must be signed by the agency head.[12] The statement of waiver must demonstrate necessity to exceed the standard fee schedule based on one or more of the following criteria:

- The inability to obtain adequate legal representation within the confines of the standard schedule;
- The agency is unable to obtain attorney services with the special expertise necessary; or
- The waiver is necessary in order to provide attorney services as a result of an emergency, an immediate danger to public health, safety and welfare, or an opportunity for the state to preserve or enhance the public treasury and that failure to contract immediately for services in excess of the standard fee schedule will work to the detriment of the state.[13]

Contracts must contain a standard addendum developed by the AG, describing in detail what is expected of both the agency and the contracted attorney.[14] The addendum must address the internal system of governance if multiple law firms are parties to the contract. Contracts must be originally executed for one year only, except that multi-year contracts may be entered into providing that they are subject to annual appropriations and annual written approval from the AG.[15] The AG is required to periodically prepare and distribute to all agencies a roster by geographic location of private attorneys under contract with agencies, their fees, and their primary areas of specialization.[16]

Proposed Changes

This bill implements several of ATRA's proposed standards for transparency and creates s. 16.0155, F.S., which requires a special procedure regarding contingency fee contracts between the AG and private attorneys. The Department of Legal Affairs is prohibited by this bill from entering into a contingency fee contract with private attorneys unless the AG makes a written determination that contingency fee representation is both cost-effective and in the public interest. This bill requires the written determination to include specific findings as to each of the following factors:

- Whether sufficient and appropriate legal and financial resources exist within the department to handle the matter;
- The time and labor required to handle the matter; the novelty, complexity, and difficulty of the questions involved; and the skills required to perform the necessary attorney services adequately;
- The geographic area in which the attorney services are to be provided; and
- The amount of experience desired for the particular kind of attorney services to be provided and the nature of the private attorney's experience with regard to similar issues or cases.

This bill also provides that, notwithstanding the exemption from competitive bidding requirements for the purchase of legal services, the AG is required to request proposals from attorneys to represent the department on a contingency fee basis, unless the AG determines in writing that requesting such proposals is not feasible under the circumstances. This bill provides that the written determination is not final agency action subject to review or challenge under section 120.569, F.S.,[17] and section 120.57, F.S, [18] and that the department is exempt from administrative bid protest provisions under section 120.57(3), F.S.

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[11] Rule 2-37.030(5), F.A.C.
[12] Rule 2-37.040, F.A.C.
[13] *Id.*
[14] Section 287.059(11), F.S.
[15] Section 287.059(12), F.S.
[16] Section 287.059(13), F.S.
[17] Section 120.569, F.S., provides an avenue for administrative review of proceedings in which the substantial interests of a party are determined by an agency.
[18] Section 120.57, F.S., provides an avenue for administrative review of agency action that determines the substantial interests of a party and that is based on an unadopted rule.

This bill requires executed contingency fee contracts to be posted on the department's website for public inspection within 5 business days after the date of execution, and remain posted for the duration of the contract, including any extensions or amendments. The amount of payment will also be posted on the department's website within 15 days after the date on which payment is made to a private attorney and remain posted for at least 180 days after payment.

Contingency Fees

Current Law

A contingency fee contract is generally defined as an arrangement with an attorney who agrees to accept his or her fee on the contingency of a successful outcome.[19] Section 287.059(7), F.S., allows the AG to enter into contingency fee contracts as long as the contract is commercially reasonable. "Commercially reasonable" is statutorily defined to mean no more than the amount permissible pursuant to rule 4-1.5 of the rules regulating The Florida Bar and case law interpreting that rule.

Rule 4-1.5 of the rules regulating The Florida Bar provides that contracts for contingency fees in an action or claim for personal injury or for property damages or for death or loss of services based upon tortious conduct of another may provide for fees as agreed between the client and the lawyer, as limited by the following provisions:[20]

> Without prior court approval as specified below, any contingent fee that exceeds the following standards shall be presumed, unless rebutted, to be clearly excessive:
>
> a. Before the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for such action:
>
> 1. 33 1/3% of any recovery up to $1 million; plus
> 2. 30% of any portion of the recovery between $1 million and $2 million; plus
> 3. 20% of any portion of the recovery exceeding $2 million.
>
> b. After the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for such action, through the entry of judgment:
>
> 1. 40% of any recovery up to $1 million; plus
> 2. 30% of any portion of the recovery between $1 million and $2 million; plus
> 3. 20% of any portion of the recovery exceeding $2 million.
>
> c. If all defendants admit liability at the time of filing their answers and request a trial only on damages:
>
> 1. 33 1/3% of any recovery up to $1 million; plus
> 2. 20% of any portion of the recovery between $1 million and $2 million; plus
> 3. 15% of any portion of the recovery exceeding $2 million.
>
> d. An additional 5% of any recovery after institution of any appellate proceeding is filed or post-judgment relief or action is required for recovery on the judgment.

Pursuant to rule 4-1.5(4)(B)(iii) of the rules regulating The Florida Bar, Article I, section 26 of the state constitution provides that in medical liability claims involving a contingency fee, unless waived, the

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[19] Black's Law Dictionary, pg. 290, (5th Edition, 1979).
[20] *See* http://www.floridabar.org/divexe/rrtfb.nsf/FV/A8644F215162F9DE85257164004C0429. Last accessed December 7, 2009.

claimant is entitled to receive no less than 70% of the first $250,000.00 of all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of $250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants.

Pursuant to standard fee schedule adopted by the department, the department may contract with private attorneys on a contingency fee basis not to exceed 35% through trial and not to exceed 40% through appeal, where attorney services involve litigation, except collections litigation shall not exceed 30%. The fee schedule further provides that where contingency fees involve non-litigation attorney services, the fee shall not exceed the rate in the market in which the attorney service is being provided.[21]

Proposed Changes

This bill provides that notwithstanding the requirement that a contingency fee contract be commercially reasonable, a contingency fee contract entered into by the department may not provide for the private attorney to receive an aggregate contingency fee in excess of:

- 25% of any recovery of up to $10 million; plus
- 20% of any portion of such recovery between $10 million and $15 million; plus
- 15% of any portion of such recovery between $15 million and $20 million; plus
- 10% of any portion of such recovery between $20 million and $25 million; plus
- 5% of any portion of such recovery exceeding $25 million.

The bill also prohibits an aggregate contingency fee that exceeds $50 million, exclusive of reasonable costs and expenses, irrespective of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

Record-keeping Requirements

Current Law

Section 287.059(16), F.S., requires private attorneys who are under contract to provide attorney services to the state or a state agency to maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of such attorney services. Such records are to be kept from the inception of the contract until at least four years after the contract terminates and are required to be available for inspection and copying upon request in accordance with chapter 119.

Proposed Changes

The bill requires that in addition to these statutory requirements, any private attorney must keep contemporaneous time records with regard to work performed on the matter by any attorneys or paralegals in increments of no greater than one-tenth of an hour. These records must be provided promptly upon request by the department.

B. SECTION DIRECTORY:

Section 1 creates s. 16.0155, F.S., regarding contingency fee agreements between the Department of Legal Affairs and private attorneys.

Section 2 provides an effective date of July 1, 2010.

[21] Rule 2-37.030(5)(a) & (b), F.A.C.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Department of Legal Affairs' legislative staff indicates that the department is not currently a party to any contingency fee contracts as contemplated by this bill, nor are they aware of the department ever having approved such a contract. It appears that this bill has an insignificant fiscal impact.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to contingency fee agreements between the Department of Legal Affairs and private attorneys; creating s. 16.0155, F.S.; providing definitions; prohibiting the Department of Legal Affairs of the Office of the Attorney General from entering into a contingency fee contract with a private attorney unless the Attorney General makes a written determination prior to entering into such a contract that contingency fee representation is both cost-effective and in the public interest; requiring that such written determination include certain findings; requiring that the Attorney General, upon making his or her written determination, request proposals from private attorneys to represent the department on a contingency-fee basis unless the Attorney General determines in writing that requesting such proposals is not feasible under the circumstances; providing that the written determination does not constitute a final agency action that is subject to review; providing that the request for proposals and contract award are not subject to challenge under the Administrative Procedure Act; requiring that a private attorney maintain detailed contemporaneous time records with regard to work performed on the matter by any attorneys or paralegals assigned to the matter in specified increments; requiring that a private attorney provide such record to the department upon request; limiting the amount of a contingency fee that may be paid to a private attorney pursuant to a

contract with the department; requiring that copies of any executed contingency fee contract and the Attorney General's written determination to enter into such contract be posted on the department's website within a specified period after the date on which the contract is executed; requiring that such information remain posted on the website for a specified duration; requiring that any payment of contingency fees be posted on the department's website within a specified period after the date on which payment of such contingency fees is made to the private attorney; requiring that such information remain posted on the website for a specified duration; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 16.0155, Florida Statutes, is created to read:

16.0155 Contingency fee agreements.—

(1) As used in this section, the term:

(a) "Department" means the Department of Legal Affairs.

(b) "Private attorney" means any private attorney or law firm.

(2) The department may not enter into a contingency fee contract with a private attorney unless the Attorney General makes a written determination prior to entering into such a contract that contingency fee representation is both cost-effective and in the public interest. Any written determination

shall include specific findings for each of the following factors:

(a) Whether there exist sufficient and appropriate legal and financial resources within the department to handle the matter.

(b) The time and labor required; the novelty, complexity, and difficulty of the questions involved; and the skill requisite to perform the attorney services properly.

(c) The geographic area where the attorney services are to be provided.

(d) The amount of experience desired for the particular kind of attorney services to be provided and the nature of the private attorney's experience with similar issues or cases.

(3) If the Attorney General makes the determination described in subsection (2), notwithstanding the exemption provided in s. 287.057(5)(f) the Attorney General shall request proposals from private attorneys to represent the department on a contingency-fee basis, unless the Attorney General determines in writing that requesting proposals is not feasible under the circumstances. The written determination does not constitute a final agency action subject to review pursuant to ss. 120.569 and 120.57. For purposes of this subsection only, the department is exempt from the requirements of s. 120.57(3), and neither the request for proposals nor the contract award are subject to challenge pursuant to ss. 120.569 and 120.57.

(4) In addition to the requirements set forth in s. 287.059(16), any private attorney shall maintain detailed contemporaneous time records for the attorneys and paralegals

working on the matter in increments of no greater than 1/10 of an hour and shall promptly provide these records to the department, upon request.

(5) Notwithstanding s. 287.059(7)(a), the department may not enter into a contingency fee contract that provides for the private attorney to receive an aggregate contingency fee in excess of:

(a) Twenty-five percent of any recovery of up to $10 million; plus

(b) Twenty percent of any portion of such recovery between $10 million and $15 million; plus

(c) Fifteen percent of any portion of such recovery between $15 million and $20 million; plus

(d) Ten percent of any portion of such recovery between $20 million and $25 million; plus

(e) Five percent of any portion of such recovery exceeding $25 million.

In no event shall the aggregate contingency fee exceed $50 million, exclusive of reasonable costs and expenses, and irrespective of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

(6) Copies of any executed contingency fee contract and the Attorney General's written determination to enter into a contingency fee contract with the private attorney shall be posted on the department's website for public inspection within 5 business days after the date the contract is executed and shall remain posted on the website for the duration of the

contingency fee contract, including any extensions or amendments thereto. Any payment of contingency fees shall be posted on the department's website within 15 days after the payment of such contingency fees to the private attorney and shall remain posted on the website for at least 180 days thereafter.

Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 449 Sanctions for Certain Court Pleadings
SPONSOR(S): Steinberg
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		De La Paz	De La Paz
2)	Policy Council			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Section 57.105, F.S. provides courts with authority to impose sanctions against a party or a party's lawyer for bringing a civil claim, or raising a defense in a civil cause of action, that has no genuine legal or factual basis. Currently, a court may impose sanctions if it finds that a losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented or at any time before trial was either: a) not supported by facts necessary to establish the claim or defense or, b) not supported by law. The sanctions are equally split between the party and the party's lawyer.

Currently, there may be instances where a party represented by an attorney does not in fact know that their lawyer is making a legally baseless argument but the party can still be sanctioned by the court. Under HB 449, sanctions for a lawyer's legally baseless argument would not be authorized against a represented party unless the court finds that the party actually knew that their lawyer's argument had no legal basis.

Also under the bill, a court could impose sanctions on its own initiative where the sanctions were ordered against a party before the entry of a voluntary dismissal of the case or settlement of the claim. Under the bill, however, once a party is placed on notice by the court that it may impose sanctions, a party's subsequent entry of a voluntary dismissal will not preclude a court from imposing sanctions as a matter of discretion.

This bill appears to have no fiscal impact.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

Section 57.105, F.S. provides courts with authority to impose sanctions against a party or a party's lawyer for bringing a civil claim or raising a defense in a civil cause of action that has no good faith legal or genuine factual basis. Under subsection (1) of this section, a court shall, on its own initiative or on motion of a party, award reasonable attorney's fees to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney when the court finds at any time during a civil proceeding or cause of action that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented or at any time before trial:

(a) Was not supported by the material facts necessary to establish the claim or defense; or
(b) Would not be supported by the application of then-existing law to those material facts.

In addition to attorney's fees, prejudgment interest shall also be awarded.

A losing party's attorney, however, is not responsible for the payment of court imposed sanctions if he or she acted in good faith, based on the representations of the client as to the existence of the facts supporting the claim. Also, sanctions will not apply if the legal argument was presented to the court as a good faith argument for an extension, modification, or reversal of existing law, or the establishment of new law as applied to the facts of the case before the court, provided such argument had a reasonable expectation of success.

Subsection (2) of s. 57.105, F.S., provides authority for the court to impose sanctions if a moving party proves by a preponderance of the evidence that any action taken by the opposing party was primarily to cause unreasonable delay.

Effect of HB 449

Under the current statute, a party who "should have known," (an objective standard) may be sanctioned by the court, along with their lawyer, if the lawyer makes an argument that lacks a good faith legal basis. Thus there may be instances where a party represented by an attorney does not actually know (a subjective standard) that their lawyer is making a legally baseless argument and the party is sanctioned by the court, splitting equally the expense of the court's sanction.

Recently, the First District Court of Appeals noted the disparity between the treatment s. 57.105 F.S. provides to a lawyer acting in good faith on the factual representations of a client, compared to the

outcome it compels when a client relies in good faith on a lawyer who presents a legally baseless argument:

> Section 57.105 allows an award of fees to be paid solely by the litigant if counsel can show that he "acted in good faith, based on the representations of [the] client as to the existence" of material facts. Unfortunately, section 57.105 does not allow for an award of fees to be paid solely by an attorney when the client acts "in good faith, based on the representations of" the attorney as to the legal sufficiency of claim or defenses. If the law allowed, we would order the fees to be paid solely by counsel.[1]

Under HB 449, sanctions for a lawyer's legally baseless argument would not be authorized against a represented party unless the court finds that the party actually knew that their lawyer's argument had no legal basis. Therefore under the bill, absent such a finding, a lawyer will be solely responsible for paying the cost of court imposed sanctions for raising such arguments.

Also under the bill, a court could impose sanctions on its own initiative where the sanctions were ordered against a party before the entry of a voluntary dismissal of the case or settlement of the claim. Under the bill, however, once a party is placed on notice by the court that it may impose sanctions, a party's subsequent entry of a voluntary dismissal will not preclude a court from imposing sanctions as a matter of discretion.

B. SECTION DIRECTORY:

Section 1. Amends s. 57.105 F.S., relating to sanctions for raising unsupported claims or defenses.

Section 2. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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[1] Gopman v. Department of Education, 974 So.2d 1208, 1212 at n 3 (1st DCA. 2008).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to sanctions for certain court pleadings; amending s. 57.105, F.S.; prohibiting a monetary sanction against a represented party for a claim that is presented as a good faith argument but that is found to not be supported by the application of then-existing law to material facts; prohibiting sanctions against a party or its attorneys by a court on its own initiative if the case has already been settled or voluntarily dismissed by that party; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 57.105, Florida Statutes, is amended to read:

57.105 Attorney's fee; sanctions for raising unsupported claims or defenses; exceptions; service of motions; damages for delay of litigation.—

(1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

(a) Was not supported by the material facts necessary to establish the claim or defense; or

(b) Would not be supported by the application of then-existing law to those material facts.

~~However, the losing party's attorney is not personally responsible if he or she has acted in good faith, based on the representations of his or her client as to the existence of those material facts. If the court awards attorney's fees to a claimant pursuant to this subsection, the court shall also award prejudgment interest.~~

~~(2) Paragraph (1)(b) does not apply if the court determines that the claim or defense was initially presented to the court as a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, as it applied to the material facts, with a reasonable expectation of success.~~

(2)~~(3)~~ At any time in any civil proceeding or action in which the moving party proves by a preponderance of the evidence that any action taken by the opposing party, including, but not limited to, the filing of any pleading or part thereof, the assertion of or response to any discovery demand, the assertion of any claim or defense, or the response to any request by any other party, was taken primarily for the purpose of unreasonable delay, the court shall award damages to the moving party for its reasonable expenses incurred in obtaining the order, which may include attorney's fees, and other loss resulting from the improper delay.

(3) Notwithstanding subsections (1) and (2), monetary sanctions may not be awarded:

(a) Under paragraph (1)(b) if the court determines that the claim or defense was initially presented to the court as a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, as it applied to the material facts, with a reasonable expectation of success.

(b) Under paragraph (1)(a) or paragraph (1)(b) against the losing party's attorney if he or she has acted in good faith, based on the representations of his or her client as to the existence of those material facts. In cases where a voluntary dismissal is entered after the court has placed a party on notice that it may impose sanctions, the court has discretion to order sanctions notwithstanding the filing of the voluntary dismissal.

(c) Under paragraph (1)(b) against a represented party, unless the court determines that the party knew of the lack of legal basis.

(d) On the court's initiative under subsections (1) and (2) unless sanctions are awarded before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(4) A motion by a party seeking sanctions under this section must be served but may not be filed with or presented to the court unless, within 21 days after service of the motion, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

(5) In administrative proceedings under chapter 120, an administrative law judge shall award a reasonable attorney's fee and damages to be paid to the prevailing party in equal amounts by the losing party and a losing party's attorney or qualified representative in the same manner and upon the same basis as provided in subsections (1)-(4). Such award shall be a final order subject to judicial review pursuant to s. 120.68. If the losing party is an agency as defined in s. 120.52(1), the award to the prevailing party shall be against and paid by the agency. A voluntary dismissal by a nonprevailing party does not divest the administrative law judge of jurisdiction to make the award described in this subsection.

(6) The provisions of this section are supplemental to other sanctions or remedies available under law or under court rules.

(7) If a contract contains a provision allowing attorney's fees to a party when he or she is required to take any action to enforce the contract, the court may also allow reasonable attorney's fees to the other party when that party prevails in any action, whether as plaintiff or defendant, with respect to the contract. This subsection applies to any contract entered into on or after October 1, 1988.

Section 2. This act shall take effect July 1, 2010.