

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/CS/SB 592

SPONSOR: Judiciary Committee, Regulated Industries Committee, Commerce, Economic Opportunities, and Consumer Services Committee, and Senator Geller

SUBJECT: Corporate Affairs

DATE: April 15, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
3.	<u>Greenbaum</u>	<u>Roberts</u>	<u>JU</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill makes the following changes to existing law governing the affairs of condominiums, cooperatives, and homeowners' associations:

- Members of condominiums, cooperatives, and homeowners' associations may consent to receive notice of association meetings by electronic transmission, such as facsimile or email.
- Notice of condominium, cooperative, or homeowners' association meetings may be broadcast on a closed circuit cable television system serving the association in lieu of posting a conspicuous meeting notice on association property.
- Condominium associations, cooperative associations, and homeowners' associations are required to maintain the email addresses of their members. The associations are not liable for the inadvertent disclosure of their members' email addresses and facsimile numbers.
- Condominium unit owners and cooperative shareholders may vote by limited proxy to waive financial reporting requirements of a condominium or cooperative association.
- Condominium and cooperative associations may charge a reasonable fee for issuing certificates detailing the status of assessments against a condominium or cooperative unit.

- Condominium associations and condominium unit owners are provided a procedure to exempt themselves from any requirement at law to retrofit any common element or units of an association with a fire sprinkler system or other enhanced fire protection system.

This CS also provides procedures for the domestication of foreign not-for-profit corporations similar to the procedures set forth in Section 607.1801, F.S., for the domestication of foreign business corporations.

This bill substantially amends ss. 617.01401, & .0141;702.09;718.111, .112,.116 & .303; 719.104,.1055, .106,.108 & .303;and 720.302, & .303, Florida Statutes.

This bill creates section 617.1803, Florida Statutes.

II. Present Situation:

Corporations Not For Profit

Chapter 617, F.S., the “Florida Not For Profit Corporation Act,” governs all Florida not for profit corporations including those not for profit corporations that are condominium associations, cooperative associations, and homeowners’ associations. The term “mail” as used in ch. 617, F.S., “means the United States mail, facsimile transmissions, and private mail carriers handling nationwide mail services.”¹ The term “electronic transmission” has not been defined in ch. 617, F.S. Written notice by a not for profit corporation to one of its members is effective when mailed.²

Domestication of Foreign Not For Profit Corporations

Chapter 617, F.S., is known as the “Florida Not For Profit Corporation Act.” Section 617.01401(5), F.S., defines a "Corporation not for profit" as “a corporation no part of the income or profit of which is distributable to its members, directors, or officers.” Section 617.01401(6), F.S., defines a "Foreign corporation "as a corporation not for profit organized under laws other than the laws of this state.”

Chapter 607, F.S., is known as the Florida Business Corporation Act. Section 607.1801, F.S., of that act provides for the domestication of foreign business corporations by filing with the Department of State an executed certificate of domestication and properly executed and recorded articles of incorporation. The current Florida Not For Profit Corporation Act does not include a similar provision for foreign corporations not for profit.

Condominiums

A condominium is that form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.³ A condominium

¹ Section 617.01401(8), F.S.

² Section 617.0141(3), F.S.

³ Section 718.103(11), F.S.

association may be a corporation for profit or a corporation not for profit.⁴ Among the records that a condominium association must maintain are the mailing addresses of its unit owners.⁵ There is no requirement for the association to maintain email addresses or facsimile numbers of unit owners.

The board of administration (board) of a condominium is the board of directors or other representative body which is responsible for the administration of the association.⁶ Notices of board meetings must be conspicuously posted on the condominium property at least 48 hours before the meeting.⁷ When the purpose of the meeting is to consider nonemergency special assessments or amendments to rules regarding unit use, however, notice must be mailed or delivered to all unit owners and posted conspicuously on the condominium property at least 14 days before the board meeting. The person providing this 14-day notice is required to execute an affidavit stating that the meeting was noticed in compliance with the law and file the affidavit in the records of the association. If the board has not designated a location on the condominium property to post notices, then all notices of board meetings must be mailed or delivered to condominium unit owners at least 14 days before the meeting.

Condominium unit owner meetings must take place at least once a year.⁸ At condominium unit owner meetings, unit owners have the right to vote on matters specified in the association's bylaws, to purchase any land or recreation lease, to elect members of the board of administration, to adopt a budget, to recall board members, and to approve the transfer of a condominium unit and other decisions.⁹ Notice of condominium unit owner meeting must be provided to a unit owner by mail or hand-delivery at least 14 days prior to the meeting.¹⁰ The notice must also be posted conspicuously on the condominium property, if possible. When a condominium unit owner meeting is called to elect members of the board, the association must mail or deliver a notice of elections at least 60 days before the elections.¹¹ Thirty five days before the election, the association must mail or deliver a second notice of the election with a ballot listing all candidates. The person who provides notice of a condominium unit owner meeting must execute an affidavit stating that meeting notice was provided to unit owners in compliance with the law and file the affidavit in the records of the association.¹² Alternatively, a postal certificate of mailing must be filed in the records of the association to demonstrate that notice was provided in compliance with the law.

Condominium associations are required to make an annual financial report available to their members.¹³ The types of financial reports required by law include: compiled financial statements; reviewed financial statements; audited financial statements; or a report of cash receipts and expenditures depending upon the amount of an association's revenue and number of

⁴ Sections 718.104(4)(i) and 718.111(1)(a), F.S.

⁵ Section 718.111(12)(a)7., F.S.

⁶ Section 718.103(4), F.S.

⁷ Section 718.112(2)(c), F.S.

⁸ Section 718.112(2)(d)1., F.S.

⁹ See ss. 718.112(2)(d)4, 718.111(8), and 718.112(2)(d)1., (f), (i), and (j), F.S.

¹⁰ Section 718.112(2)(d)2., F.S.

¹¹ Section 718.112(2)(d)3., F.S.

¹² *Supra* note 10.

¹³ Section 718.111(13), F.S.

units.¹⁴ The law increases the financial reporting requirements of an association as the revenues of the association increase, unless the association has fewer than 50 units. Condominium unit owners, however, may vote to reduce the financial reporting requirements from audited financial statements, reviewed financial statements, or compiled financial statements to a report of cash receipts and expenditures.¹⁵

When unit owners vote by proxy, limited proxies must be used to waive or reduce reserve accounts for capital expenditures and deferred maintenance; to amend the declaration creating the condominium; to amend the bylaws or articles of incorporation; and to decide almost any other matter, including votes to reduce a condominium's financial reporting requirements.¹⁶ A limited proxy form records how an owner has decided to vote on an issue and does not authorize a proxy holder to decide how the owner's vote will be cast.¹⁷

Prior to the adoption of s. 52, ch. 2000-302, L.O.F., Florida law expressly required that limited proxies be used when voting by proxy to reduce a condominium's financial reporting requirements.¹⁸ At that time, provisions existed in s. 718.112(2)(b)2., F.S. (1999), which stated that limited proxies are required for proxy votes "to waive financial statement requirements as provided by s. 718.111(14)." Section 718.111(14), F.S. (1999), required condominiums to make compiled, reviewed, or audited financial statements available to their members. Section 718.111(13), F.S. (1999), required a minimum level of financial reporting that could not be waived. Section 52, ch. 2002-302, L.O.F., largely combined the provisions of subsections (13) and (14) of s. 718.111, F.S. (1999), into a new subsection (13).¹⁹ The language in s. 718.112(2)(b)2., F.S. (1999), requiring the use of limited proxies to vote by proxy to in effect reduce a condominium's financial reporting requirements was not amended to reflect the transfer of the substance of subsection (14) of s. 718.111, F.S., into subsection (13). The phrase "for votes taken to waive financial statement requirements as provided by s. 718.111(14)" was subsequently deleted from s. 718.112(2)(b)2., F.S. (2000), by a reviser's bill during the 2001 legislative session, apparently because s. 718.111(14), F.S., no longer applied to financial reporting.²⁰

A condominium has the authority to make and collect assessments from unit owners to maintain, lease, or repair association property.²¹ Assessments must be made against condominium units in an amount sufficient to pay the association's estimated current operating expenses and unpaid operating expenses previously incurred.²² A unit owner is jointly and severally liable with a previous condominium unit owner for all unpaid assessments that came due before the purchase of the condominium unit.²³

¹⁴ Section 718.111(13)(a) and (b), F.S.

¹⁵ Section 718.111(13)(d), F.S.

¹⁶ Sections 718.112(2)(b)2. and 718.111(13)(d), F.S.

¹⁷ See Department of Business and Professional Regulation, *General Information About Proxies*, which are instructions for BPR Form 33-033 Revised 11/23/93.

¹⁸ See ss. 718.111(13) and (14), and 718.112(2)(b)2., F.S. (1999).

¹⁹ See also House of Representatives, Committee on Real Property & Probate, *Final Analysis for CS/CS/HB 591, 1st Engrossed*, p. 36-37, July 26, 2000.

²⁰ Section 21, ch. 2001-64, L.O.F.

²¹ Sections 718.103(1) and 718.111(4), F.S.

²² Section 718.112(2)(g), F.S.

²³ Section 718.116(1)(a), F.S.

A condominium association has a lien on each condominium parcel to secure the payment of assessments.²⁴ To collect on a lien, a condominium association may foreclose on the lien and may also bring an action against a unit owner to recover a money judgment.²⁵ The law, however, offers protection to purchasers of condominium units against unknown liens. Upon the request of a person purchasing a condominium unit or a mortgagee, a condominium association must provide a certificate stating the status of assessments against a condominium unit.²⁶ All persons other than the owner of the condominium unit for which the certificate was issued are entitled to rely upon the certificate issued by the condominium.

Cooperatives

A cooperative is a “form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.”²⁷ A cooperative may be a corporation for profit or a corporation not for profit.²⁸ Among the records that cooperatives must maintain are the mailing addresses of its unit owners.²⁹ There is no requirement for cooperatives to maintain email addresses or facsimile numbers of unit owners.

The board of administration (board) is the board of directors or other representative body which is responsible for the administration of a cooperative association.³⁰ Notices of board meetings must be posted conspicuously on the cooperative property at least 48 hours before the meeting.³¹ When the purpose of the meeting is to consider nonemergency special assessments or amendments to rules regarding unit use, however, notice must be mailed or delivered to all unit owners and posted conspicuously on the cooperative property at least 14 days before the board meeting.

Shareholder meetings must take place at least once a year.³² At shareholder meetings, shareholders of a cooperative have the authority to vote on matters specified in the cooperative documents such as the cooperative’s articles of incorporation or bylaws; to impose fees for the use of cooperative property; to purchase land or acquire a recreational lease; to modify a cooperative unit; to amend the cooperative documents; and to vote on other matters.³³ The cooperative association must provide notice of shareholder meetings including an agenda by mail to each unit owner at least 14 days before the meeting.³⁴ Notice of shareholder meetings must also be posted conspicuously on condominium property at least 14 days before a shareholder meeting. A person who provides notice of a shareholder meeting must execute an affidavit

²⁴ Section 718.116(5)(a), F.S.

²⁵ Section 718.116(6)(a), F.S.

²⁶ Section 718.116(8), F.S.

²⁷ Section 719.103(12), F.S.

²⁸ Section 719.103(2), F.S.

²⁹ Section 719.104(2)(a)5., F.S.

³⁰ Section 719.103(3), F.S.

³¹ Section 719.106(1)(c), F.S.

³² Section 719.106(1)(d), F.S.

³³ See ss. 719.104(5) and (6), 719.1055(1), and 719.304(1), F.S.

³⁴ Section 719.106(1)(d), F.S.

stating that meeting notice was provided to unit owners in compliance with the law and file the affidavit in the records of the association. Alternatively, a postal certificate of mailing must be filed in the records of the association to demonstrate that notice was provided in compliance with the law.

Chapter 718, F.S., pertaining to condominiums, and ch. 719, F.S., pertaining to cooperatives, contain many similar and identical provisions. Both chapters also perform the same function of regulating an association. The provisions of s. 719.104(4), F.S., requiring cooperatives to make financial reports available to unit owners is nearly identical to the provisions of s. 718.111(13) and (14), F.S. (1999), requiring condominiums to make financial reports available to unit owners. Section 719.104(4)(b), F.S., like s. 718.111(13)(d), F.S., permits unit owners to vote to waive the requirements for the association to provide compiled, reviewed, or audited financial statements. Like s. 718.111(13), F.S., s. 719.104(4)(a), F.S., does not authorize cooperative unit owners to waive the requirement for the creation of a report of cash receipts and expenditures. Unlike the proxy voting procedures in ch. 718, F.S., before 2000, it appears that ch. 719, F.S., never expressly required the use of limited proxies to reduce a cooperative's financial reporting requirements.

A cooperative has the authority to make and collect assessments from unit owners to maintain, lease, or repair the cooperative's common areas.³⁵ Assessments must be made against cooperative unit owners in an amount sufficient to pay the cooperative's estimated current operating expenses and unpaid operating expenses previously incurred.³⁶ A unit owner is jointly and severally liable with a previous cooperative unit owner for all unpaid assessments that came due before the purchase of the cooperative unit.³⁷

A cooperative association has a lien on each cooperative parcel to secure the payment of assessments.³⁸ To collect on a lien, a cooperative association may foreclose on the lien and may also bring an action against a unit owner to recover a money judgment.³⁹ The law, however, offers protection to persons such as purchasers who could be harmed by the existence of a lien on a cooperative unit. A certificate issued by a cooperative association detailing the status of assessments against a cooperative unit may be relied upon by all persons other than the owner of the cooperative unit.⁴⁰

Homeowners' Associations

A homeowners' association is "a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof."⁴¹ Among the records that homeowners' associations are required to maintain are member addresses and parcel identifications.⁴² There is

³⁵ Sections 719.103(1) and 719.104(5), F.S.

³⁶ Section 719.106(1)(g), F.S.

³⁷ Section 719.108(1), F.S.

³⁸ Section 719.108(4), F.S.

³⁹ Section 719.108(5), F.S.

⁴⁰ Section 719.108(6), F.S.

⁴¹ Section 720.301(7), F.S.

⁴² Section 720.303(4)(g), F.S.

no requirement for homeowners' associations to maintain the email addresses and facsimile numbers of their members.

Florida Statutes predating the 2000 legislative session clearly provided that homeowners' associations were corporations not for profit and subject to the provisions of ch. 617, F.S. According to s. 617.01401(4), F.S., the term "corporation" as used in ch. 617, F.S., is defined as a corporation not for profit, subject to the provisions of ch. 617. Section 617.301(7), F.S. (1999), defined "homeowners' association" as a Florida corporation.⁴³ When the provisions of ch. 617, F.S., relating to homeowners' associations were renumbered as sections of ch. 720, F.S., the provisions were not amended to reflect whether homeowners' associations would continue to be required to be corporations *not for profit* and subject to the provisions of ch. 617, F.S.⁴⁴

The board of directors of a homeowners' association manages the affairs of the association.⁴⁵ Notice of meetings of the board of directors of a homeowners' association must be posted conspicuously in the community at least 48 hours in advance of the meeting or be mailed or delivered to each member of the association at least 7 days before the meeting.⁴⁶ The bylaws of communities with more than 100 members may publish a schedule of board meetings or provide for a reasonable alternative to posting or mailing notice of board meetings. Meetings of homeowners' associations and committees of homeowners associations with the power to spend funds or make architectural decisions must be noticed in the same manner as meetings of the board of directors.

Firesafety Requirements

Sections 125.01 and 125.56, F.S., grant county government the authority to enforce the fire protection code as provided in ss. 633.022 and 633.025, F.S. Section 633.025, F.S., provides that the most current edition of the National Fire Protection Association (NFPA Standards 1, the Fire Prevention Code, and NFPA 101, the Life Safety Code) adopted by the State Fire Marshall will be deemed to be adopted by each local authority with firesafety responsibility. These codes are adopted in ch. 4A-60, F.A.C.

Section 633.025(5), F.S., effective July 1, 2001, requires that new building structures must comply with the firesafety code. Under s.633.025(6) F.S. Recognizing the practical limits to retrofitting existing structures, the local fire safety official is authorized to apply the applicable firesafety code to the extent practical to assure a reasonable degree of safety to life and property, or the fire official must fashion a reasonable alternative that affords an equivalent degree of safety.

Section 553.895(2), F.S., provides in pertinent part that:

[A]ny building which is of three stories or more and for which the construction contract is let after January 1, 1994, regardless of occupancy classification and including any building which is subject to s. 509.215, shall be equipped with an

⁴³ See also s. 720.301(7), F.S. (defining "homeowners' association" as a Florida corporation).

⁴⁴ See ss. 44-51, ch. 2000-258, L.O.F.

⁴⁵ See s. 617.01401(2), F.S. (defining "board of directors" as used in ch. 617, F.S.).

⁴⁶ Section 720.303(2), F.S.

automatic sprinkler system installed in compliance with the provisions of chapter 633 and the rules and codes adopted pursuant thereto.

Sections 7-3.2.21.1 and 7-3.2.21.2 of NFPA 1, and 31.3.5.6 of NFPA 101, require that all new and existing high-rise buildings must be protected throughout by an approved automatic sprinkler system. NFPA 1 and 101 provide a 12-year grace period for compliance.

Section 718.112(2)(l), F.S., requires that the by-laws of a condominium association must provide that a certificate of compliance from a licensed electrical contractor may be accepted by the association's board as proof of compliance to the applicable fire safety code.

Mortgage Foreclosure Actions

Sections 702.07 and 702.08, F.S., provide that a dismissal of a mortgage foreclosure action acts, in part, as a reinstatement of the mortgage. Section 702.08, F.S., provides that when a decree of foreclosure is rescinded, vacated, or set aside and the foreclosure proceedings have been dismissed, the mortgage is "fully restored in all respects to the original status" and "shall be for all purposes whatsoever legally of force and effect just as if foreclosure proceeding had never been instituted and a decree of foreclosure had never been made." The definition of "mortgage" for the purposes of ss. 702.07 and 702.08, F.S., is cross-referenced in s. s. 48.194(2), F.S., which allows service of process outside the state, where the address of the person to be served is known, to be made by registered mail when rem or quasi in rem relief is sought in a foreclosure proceeding.

Statute of Limitations

Section 718.303(1), F.S., provides that each condominium unit owner, tenant and other invitee, and association is required to comply with the ch. 718, F.S., the declaration, the documents creating the condominium association, and the association bylaws. The statute permits actions for injunctive relief or damages for failure to comply with the statutory provisions and provides for prevailing party attorney's fees in certain situations. Section 719.303(1), F.S., contains similar provisions for cooperative associations.

There is some question as to whether an action to enforce association or cooperative bylaws is a legal or equitable action on a contract or whether it is, in substance, a claim for specific performance and, depending upon the type of action, the statute of limitations will vary. Section 95.11(5)(a), F.S., provides that an action for specific performance of a contract must be commenced within one year. However, section 95.11(2)(b), F.S., provides that a legal or equitable action on a contract must be commenced within five years.

In a recent decision, *Sheoah Highlands, Inc. v. Daugherty*, 873 So. 2d 579 (Fla. 5th DCA 2003), the Fifth District Court of Appeal found reasonable arguments supporting either statute of limitations for an action against a condominium's governing association for the enforcement of a declaration. The unit owner, Daugherty, brought an action against Sheoah Highlands, Inc., alleging that the association failed to enforce the condominium declaration relating to building screened enclosures.⁴⁷ The association argued that Daugherty's claim for injunctive relief was, in

⁴⁷ See *id.* at 580-81.

essence, a claim for specific performance and, therefore, barred by the one year statute of limitations in s. 95.11(5)(a), F.S.⁴⁸ The court applied the five-year statute of limitations because “where there is reasonable doubt as to legislative intent, the preference is to allow the longer period of time.”⁴⁹

In a similar case, *Pond Apple Place III Condo. Ass’n v. Russo*, No. 4D02-1502 (Fla. 4th DCA Feb. 26, 2003), a condominium association brought suit to enforce a covenant that prohibited pets. The pet owner argued that the one year statute of limitations applied. The court held that “[w]here the contractual provision sought to be enforced is negative in nature, injunctive relief is the proper vehicle for judicial enforcement. The applicable statute of limitations for injunction proceedings of the type here under consideration is five years. § 95.11(2)(b), Fla. Stat (2002).”⁵⁰

Chapter 720

Chapter 720, F.S., relates to homeowners’ associations in Florida. Chapter 617, F.S., governs not for profit corporations in Florida. Prior to 2000, provisions relating to homeowners’ associations and provisions relating to not for profit corporations were contained in Chapter 617, F.S. Chapter 2000-258, L.O.F., moved the sections relating to homeowners’ associations, ss. 617.301-.312, F.S., to ch. 720, F.S. Those provisions are now located in ss. 720.301-720.312, F.S. This change may have created some confusion. Under the law prior to 2000, ch. 617, F.S., applied unless provided otherwise in the provisions of ch. 617, F.S., specifically governing homeowners’ associations. Now that those sections governing homeowners’ associations have been transferred to ch. 720, F.S., some have argued that current law is not clear as to what statute applies if ch. 720 is silent on a particular issue.

III. Effect of Proposed Changes:

Section 1 amends s. 617.01401, F.S., to define “electronic transmission” as used in ch. 617, F.S., the Florida Not For Profit Corporation Act. The term electronic transmission “means any form of communication, not directly involving the physical transmission or transfer of paper, which creates a record that may be retained, retrieved, and reviewed by a recipient thereof and which may be directly reproduced in a comprehensible and legible paper form by such recipient through an automated process. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmissions of images, and text that is sent via electronic mail between computers.” This definition will apply to meeting notices by corporations not for profit that are condominiums, cooperatives, and homeowners’ associations to their members by virtue of proposed s. 617.0141(2)(3), F.S., permitting notice electronic by electronic transmission to members of corporations not for profit. (See section 2 of the bill.)

Section 2 amends s. 617.0141, F.S., provides that members of a not for profit corporation are authorized to consent to receive notice by specific forms of electronic communication. Consent

⁴⁸ See *id.* at 581. The association relied on *Ferola v. Blue Reef Holding Corp.*, 719 So. 2d 389 (Fla. 4th DCA 1998), wherein the Fourth District Court of Appeal held a suit against a developer for violating restrictions and covenants by constructing townhouses on a designated recreation area, failing to provide recreational amenities and to maintain common areas was a claim for specific performance that is barred by one-year limitation period).

⁴⁹ See *Sheoah Highlands, Inc.*, 837 So. 2d at 582, *citing* *Baskerville-Donovan Eng’rs, Inc. v. Pensacola Executive House Condominium Ass’n*, 581 So. 2d 1301, 1303 (Fla. 1991).

⁵⁰ See *id.* at 1 (case citation omitted).

to receive notice by electronic transmission may be revoked by the member upon notice to the not for profit corporation. Consent to receive notice by electronic transmission is revoked by operation of law when a corporation is unable to deliver notice on two consecutive occasions in the form electronic transmission authorized by the member. An inadvertent failure to deliver notice by another authorized means after consent to receive notice by electronic transmission does not invalidate any meeting or action for which notice was otherwise required by law. Section 2 of the bill also provides criteria to determine when notice to members of a not for profit corporation is effective for notices delivered by specified forms of electronic transmissions.

Section 3 creates s. 617.1803, F.S., to provide procedures for the domestication of foreign not-for-profit corporations. The procedures in the bill are similar to the procedures set forth in Section 607.1801, F.S., for the domestication of foreign business corporations.

Section 4 amends s. 718.111(11), F.S., to provide that a declaration of a condominium (declaration), as originally recorded or amended, may allow freestanding property with not more than one building in or on such unit to be insured by the unit owner, rather than the association, if the unit owner is required to obtain adequate insurance. This adequate insurance may include reasonable deductibles notwithstanding the requirements of the declaration. Further, the CS supersedes certain coverage requirements for hazard insurance policies provided to the association, covering a condominium building, and requires, instead, that every policy issued or renewed on or after January 1, 2004 to provide primary coverage for the following:

- All portions of condominium property located outside the units;
- Condominium property located inside the units if initially installed or replaced with like kind and quality in accordance with original plans or, if those plans are not available, as they existed in the unit at the time of conveyance; and
- All portions of the condominium property required to be covered under the declaration.

However, there are exclusions from coverage in existing law and the CS expands the list to include all floor, wall, and ceiling coverings, water filters, countertops, and window treatments and air conditioning compressors that serve only one unit. The CS clarifies the property and casualty insuring responsibilities of the association provided in the CS do not affect any insurance contract provided to a unit owner. Also, the CS deletes a requirement that the unit owner be considered an additional insured under a casualty or property insurance policy. This CS gives an association the authority to amend the declaration with regard to insurance requirements without mortgagee approval to conform to the insurance requirements of s. 718.111, F.S.

The CS addresses information provided to a prospective lienholder or purchaser by the association or its authorized agent. Under the CS, an association or its agent is not required to provide the prospective purchaser or lienholder with information about the condominium or association other than as required by ch. 718, F.S. An association or authorized agent may charge a reasonable fee not to exceed \$150 for responding to requests for information, by or on behalf of a prospective purchaser or lienholder, other than required by law, plus the cost of photocopying and any attorney's fees incurred by the association in connection with the association's response.

In addition, the CS clarifies that an insurance policy issued to a unit owner shall be without subrogation rights against the condominium association. It also requires real or personal property

excluded from coverage under a s. 718.111(11)(b), F.S., to be insured by the unit owner. The CS applies the above provisions relating to insurance to every condominium in the state regardless of the date of its declaration.

This bill section also amends s. 718.111(12)(a), F.S., requires condominiums to maintain electronic mailing addresses and numbers of condominium unit owners, in addition to the unit owner's mailing addresses, unit identifications, voting certifications, and known telephone numbers. This requires the condominiums to remove the electronic mailing addresses and numbers of condominium unit owners who request in writing that their electronic mailing addresses be omitted from the records of the condominium association. Condominium associations are immune from liability for inadvertent disclosures of unit owner email addresses and facsimile numbers.

Section 5 amends s. 718.112, F.S. to provide the following:

Financial Reports

The bill, which amends s. 718.112, allows condominium unit owners to use limited proxies for votes taken in accordance to s. 718.111(13)(d), F.S., relating to financial reports of cash receipts and expenditures. Under existing law, a unit owner may vote by limited proxy to *reduce* the condominium association's financial reporting requirements. Under prior law, when voting by proxy, a unit owner was expressly required to vote by limited proxy to reduce a condominium association's financial reporting requirements.

Meeting Notices

Notices of meetings of the board of administration, unit owner meetings, and other meetings may be delivered by electronic transmission if authorized in a condominium association's bylaws and upon the consent of a unit owner. Meeting notices may be broadcast on a closed-circuit cable television system serving the condominium association in lieu of posting a conspicuous meeting notice on condominium property. The broadcast must allow an average reader to be able to read and comprehend the notice.

Rulemaking

The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation is required to adopt rules establishing procedures for delivering notice of condominium meetings by electronic transmission.

Firesafety Requirements

The bill provides a procedure for condominium associations and condominium unit owners to exempt themselves from any requirement at law to retrofit any common element or units of an association with a fire sprinkler system or other enhanced fire protection system, provided that:

- Two-thirds of the unit owners by vote at a noticed meeting or written consent choose to forgo such retrofitting. The vote is effective upon the recording of a certificate attesting to the vote in the public records.

Section 6 amends s. 719.1055, F.S., to allow unit owners, an association, or cooperative to forego retrofitting of the common elements or units of a residential cooperative with a fire sprinkler system or other enhanced fire protection system in a building that is certified for occupancy by the applicable governmental entity if approved by a two-thirds vote of all voting interests. Also, the committee substitute prohibits a high-rise building owner from foregoing the retrofitting of common areas. It defines “high-rise building” and “common areas”. The vote may occur at a duly noticed meeting or by written consent and is effective when the executed certificate is recorded. Further, it contains notice provisions for the associations in buildings that vote affirmatively to forego retrofitting. It also restricts the use of proxies in such vote and specifies such vote must occur biannually or at the next annual meeting on a vote of the majority of the board. The association is to report the membership vote and recording of the certificate to the Division of Land Sales and Mobile Homes of the Department of Professional Regulation and the number of cooperatives voting to forego the retrofitting will be reported by the division annually to the State Fire Marshall’s Office. Alternatively, if the retrofitting has been undertaken, the association must report the per-unit cost of such work to the division.

Section 7 amends s. 718.116, F.S., to authorize condominium associations to charge a reasonable fee for issuing certificates detailing the status of assessments against a condominium unit.

Section 8 amends s. 719.104, F.S., to require cooperative associations to maintain electronic mailing addresses and numbers of condominium unit owners, in addition to the unit owner’s mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The bill requires the cooperatives to remove the electronic mailing addresses and numbers of cooperative unit owners who request in writing that their electronic mailing addresses be omitted from the records of the condominium association. Cooperatives are immune from liability for inadvertent disclosures of unit owner email addresses and facsimile numbers.

Section 9 amends s. 719.106, F.S., to provide the following:

Financial Reports

The text of the bill allows cooperative unit owners to vote by limited proxy to waive the cooperative association’s financial reporting requirements. Under existing law, a unit owner may vote by limited proxy to *reduce* the cooperative association’s financial reporting requirements. Under prior law relating to condominiums which is similar to existing law relating to cooperatives, when voting by proxy, a unit owner was expressly required to vote by limited proxy to reduce the condominium association’s financial reporting requirements.

Meeting Notices

Notices of meetings of the board of administration, shareholder meetings, and other meetings may be delivered by electronic transmission if authorized in a cooperative association’s bylaws and upon the consent of a unit owner. Meeting notices may be broadcast on a closed-circuit cable television system serving the cooperative association in lieu of posting a conspicuous meeting on cooperative property. The broadcast must allow an average reader to be able to read and comprehend the notice.

Rulemaking

The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation is required to adopt rules establishing procedures for delivering notice of cooperative meetings by electronic transmission.

Section 10 amends s. 719.108, F.S., to authorize cooperative associations to charge a reasonable fee for issuing certificates detailing the status of assessments against a cooperative unit.

Section 11 amends s. 720.302, F.S., to provide that homeowners' associations are corporations not for profit, governed by ch. 617, F.S.

Section 12 amends s. 720.303, F.S., to provide the following:

Meeting Notices

Meetings of the board of directors and committee meetings of a homeowners' association may be delivered by electronic transmission if authorized by the association's bylaws and upon the consent of an association member. Meeting notices may be broadcast on a closed-circuit cable television system serving the association in lieu of posting a conspicuous notice of a meeting on association property.

Records

Homeowners' associations must maintain electronic mailing addresses of their members, except for members who request in writing that their electronic mailing addresses be omitted from the records of the association. Homeowners' associations are immune from liability for inadvertent disclosures of member email addresses and facsimile numbers.

Section 13 amends s. 702.09, F.S., to add liens created under the recorded covenants of a homeowners' association to the definition of "mortgage" for the purposes of ss. 702.707 and 702.08, F.S., which address the setting aside of a decree of foreclosure. This definition of "mortgage" is also cross-referenced in s. 48.194(2), F.S., which would allow service of process outside the state, where the address of the person to be served is known, to be made by registered mail when rem or quasi in rem relief is sought in a foreclosure proceeding.

Section 14 amends s. 718.303, F.S., to provide that actions under the section for failure to comply with ch. 718, F.S., the documents creating the association, or the association's bylaws shall not be deemed to be actions for specific performance. This would extend the statute of limitations for actions under this section to five years pursuant to s. 95.11(2)(b), F.S.

Section 15 amends s. 719.303, F.S. to provide that actions under the section for failure to comply with ch. 719, F.S., the cooperative documents, the documents creating the associations, or the association's bylaws shall not be deemed to be actions for specific performance. This would operate to extend the statute of limitations for actions under this section to five years pursuant to s. 95.11(2)(b), F.S.

Section 16 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

The bill authorizes condominium and cooperative associations to charge a reasonable fee for issuing certificates detailing the status of assessments against a condominium or cooperative unit.

B. Private Sector Impact:

Condominium associations, cooperative associations, and homeowners' associations may save on the costs to provide meeting notices by mail by delivering meeting notices by electronic transmissions.

Condominium associations and condominium unit owners may be able to exempt themselves from the requirement to retrofit any common element or units of an association with a fire sprinkler system or other enhanced fire protection system, provided the members of the association or the association's unit owners consent to such an exemption.

Foreign not-for-profit corporations may become domesticated in this state using a procedure similar to that set forth for the domestication of foreign business corporations.

Prospective purchasers and lienholders may be required to pay an association up to \$150 plus the cost of photocopying for information they request.

C. Government Sector Impact:

The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation must adopt rules establishing procedures for condominium associations and homeowners' associations to deliver meeting notices by electronic transmission. The Division is required to develop a form for associations to report whether the unit owners voted by a two-thirds vote to forego retrofitting the common elements or units of a residential condominium with a fire sprinkler system or other enhanced fire protection system or the per unit costs provided

by the associations that have elected to comply with the retrofitting requirement. This would require the development of a form for the associations and adoption by rule.

Local government agencies responsible for fire safety will have to determine whether to exempt all condominiums, or unit owners in their jurisdiction from the requirement to retrofit those facilities with fire protection sprinkler systems.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
