

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: SB 2494

INTRODUCER: Senator Margolis

SUBJECT: Community Associations

DATE: April 8, 2008

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | Oxamendi | Imhof | RI | Favorable |
| 2. | | | CA | |
| 3. | | | JU | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

The bill provides identical requirements for condominiums, cooperatives, and homeowners' associations relating to when a unit or parcel owner petitions the circuit court for the appointment of a receiver in situations when the respective association has failed to fill vacancies on the board sufficient to constitute a quorum. The bill provides that the unit or parcel owner must give notice of his or her intent to file a petition for the appointment of a receiver. It also provides the form for the notice. The notice must be sent, at least 30 days prior to the filing of the petition seeking receivership, by certified mail or personal delivery to the association and every unit or parcel owner. It must also be posted in a conspicuous manner on association property. All unit or parcel owners must be given a written notice of the appointment of a receiver.

The association must pay the salary of the receiver, and his or her court costs and attorney's fees. A court-appointed receiver has all powers and duties of a duly constituted board. The receiver must serve until the association has filled the vacancies on the board sufficient to constitute a quorum and the court relieves the receiver of the appointment.

The bill also provides that, if a receiver is appointed for any reason relating to a condominium, cooperative, or homeowners' association, the court must direct the receiver to provide all unit or parcel owners a written notice of his or her appointment. The notice must be mailed or delivered within ten days after the appointment. If the notice is sent by mail, then it must be sent to the address used by the county property appraiser.

The bill also provides for the appointment of a receiver during the termination of a condominium after a natural disaster. It provides that the court must direct the receiver to provide to all unit owners a written notice of the receiver's appointment. The notice must be mailed or delivered

within ten days after the appointment. Notice by mail to unit owners shall be sent to the address used by the county property appraiser for notice to the unit owners.

The bill provides identical notice requirements for the filing of a lien against a unit or parcel by a condominium or cooperative association, respectively. The lien may not be filed against a condominium unit or cooperative parcel until 30 days after the date on which a notice of intent to file a lien has been served to the owner of the condominium unit or cooperative parcel by certified mail or personal service. Liens against a parcel in a homeowners' association are currently subject to a notice requirement before the filing of a claim of lien against a parcel.

The bill provides an effective date of July 1, 2008.

This bill substantially amends the following sections of the Florida Statutes: 718.1124, 718.117, 718.121, 719.108, and 720.305. This bill creates the following sections of the Florida Statutes: 718.127, 719.1124, 719.127, 720.3053, and 720.313.

II. Present Situation:

Condominium Background

A condominium is a “form of ownership of real property created pursuant to this chapter, 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.”¹ Condominiums are regulated by the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) of the Department of Business and Professional Regulation (department), in accordance with ch. 718, F.S.

Cooperative Associations

Section 719.103(12), F.S., defines a “cooperative” as:

that 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.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, an apartment unit's occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.² A cooperative is created by cooperative documents which include, but are not limited to, articles of incorporation of the association, bylaws and the ground lease or other underlying lease if any.³

¹ Section 718.103(11), F.S.

² See ss. 719.106(1)(g) and 719.107, F.S.

³ Section 719.103(13)(a), F.S.

Homeowners' Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in this state, provides procedures for operating homeowners' associations, and protects the rights of association members without unduly impairing the ability of such associations to perform their functions.⁴

Section 720.301(9), F.S., defines a "homeowners' association" as 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, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. Unless specifically stated to the contrary, homeowners' associations are also governed by ch. 617, F.S., relating to not for profit corporations.⁵

Homeowners' associations are administered by a board of directors whose members are elected.⁶ The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.⁷ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.⁸

Appointment of a Receiver

A receiver is a "disinterested person appointed by a court, or by a corporation or other person, for the protection or collection of property that is the subject of the diverse claims."⁹

If a condominium association or a homeowners association has a vacancy on the board that prevent the board from obtaining a quorum, any unit or parcel owner may apply to the circuit court for the appointment of a receiver to manage the affairs of the association.¹⁰

At least 30 days before the filing of a petition for receivership, the unit or parcel owner in either a condominium association or a homeowners' association must mail to the association and post in a conspicuous place a notice describing his or her intent to file the petition. If the association is able to fill the vacancies sufficient to constitute a quorum, then the owner may not file an action for receivership. If the association does not fill the vacancies, the unit or parcel owner may proceed with the petition. If a receiver is appointed, then the association is responsible for the receiver's salary, court costs, and attorney's fees. Furthermore, the receiver has the power and

⁴ See s. 720.302, F.S.

⁵ Section 720.302(5), F.S.

⁶ See ss. 720.303 and 720.307, F.S.

⁷ See ss. 720.301 and 720.303, F.S.

⁸ Section 720.303, F.S.

⁹ Black's Law Dictionary, Second Pocket Edition (St. Paul, Minn. 2001).

¹⁰ Sections 718.1124, and 720.305(4), F.S.

duties of the board of administration and must serve until the association fills the vacancies on the board.¹¹

The condominium unit owners and cooperative parcel owners do not currently have to file a notice before the filling of a petition for receivership. Chapter 120, F.S., does not provide for the appointment of a receiver when there is a failure to fill a vacancy on the board.

Notice of Liens

Condominium, cooperatives and homeowners' association unit and parcel owners are liable for all assessments on the unit or parcel.¹² These associations can place a lien on each condominium, cooperative, or homeowners' association unit or parcel to secure the payment of assessments.¹³

However, no claim of lien on a parcel in a homeowners' association may be filed until at least 45 days after the association has given a written notice or demand for the past due assessments.¹⁴

Condominium and cooperative associations are not required to give notice of their intent to file a claim of lien against a unit or parcel. However, 30 days notice is required before a condominium association may bring an action to foreclose on a lien for past due assessments.¹⁵

III. Effect of Proposed Changes:

Appointment of a Receiver

The bill conforms, for condominiums, cooperatives, and homeowners' associations, the requirements for petitioning the circuit court for appointment of a receiver in situations when the respective association has failed to fill vacancies on the board sufficient to constitute a quorum. Under the bill, the requirements for each of these community associations are identical.

The bill amends s. 718.1124, F.S., to create the notice requirement for condominium associations. It creates s. 719.1124, F.S., to permit a parcel owner in cooperative associations to petition the circuit court for the appointment of a receiver and to provide a notice requirement. It also creates s. 720.3053, F.S., to provide an identical petition provision and notice requirement for homeowners' associations. The bill deletes the current notice requirements in s. 720.305(4), F.S., for homeowners' associations.

The bill provides that the unit or parcel owner must give notice of his or her intent to file a petition for the appointment of a receiver. It also provides the form for the notice within the relevant sections. The notice for each community association provides that:

¹¹ *Id.*

¹² Sections 718.116(1), 719.108, and 720.3085, F.S.

¹³ *Id.*

¹⁴ Section 720.3085(4), F.S.

¹⁵ Section 718.116(6), F.S.

- The unit or parcel owner intends to file a petition in the circuit court for appointment of a receiver to manage the affairs of the association on the grounds that the association has failed to fill vacancies on the board sufficient to constitute a quorum;
- The petition will not be filed if the vacancies are filled within 30 days after the date on which this notice was sent or posted, whichever is later;
- If a receiver is appointed, the receiver shall have all of the powers of the board and shall be entitled to receive a salary and reimbursement of all costs and attorney's fees payable from association funds; and
- The name and address of the petitioning unit or parcel owner.

The notice must be sent at least 30 days prior to the filing of the petition seeking receivership. The notice must be sent by certified mail or personal delivery to the association and every unit or parcel owner. It must also be posted in a conspicuous manner on association property. All unit or parcel owners must be given a written notice of the appointment of a receiver.

The association must pay the salary of the receiver, and his or her court costs and attorney's fees. A court-appointed receiver has all powers and duties of a duly constituted board. The receiver must serve until the association has filled the vacancies on the board sufficient to constitute a quorum and the court relieves the receiver of the appointment.

Sections 718.1124 and 720.305(4), F.S., do not currently provide that the receiver serves until relieved of the appointment by the court.

The bill creates ss. 718.127, 719.127, and 720.131, F.S., to provide an additional, identical notice requirement related to court-appointed receivers for condominium, cooperative, or homeowners' associations. These provisions provide that, if a receiver is appointed for any reason relating to a condominium, cooperative, or homeowners' association, the court must direct the receiver to provide all unit or parcel owners a written notice of his or her appointment. The notice must be mailed or delivered within ten days after the appointment. If the notice is sent by mail, then it must be sent to the address used by the county property appraiser.

Termination of Condominiums

The bill also amends s. 718.117(7), F.S., which provides for the appointment of a receiver during the termination of a condominium after a natural disaster. It provides that the court must direct the receiver to provide to all unit owners a written notice of the receiver's appointment. The notice must be mailed or delivered within ten days after the appointment. Notice by mail to a unit owner shall be sent to the address used by the county property appraiser for notice to the unit owner.

Notice of Lien

The bill provides identical notice requirements for the filing of a lien against a unit or parcel by a condominium or cooperative association, respectively. The bill creates s. 718.121, F.S., to provide the notice requirement for condominium associations. It amends s. 719.108, F.S., to provide the requirement for cooperatives.

The bill provides that a lien may not be filed against a condominium unit or cooperative parcel until 30 days after the date on which a notice of intent to file a lien has been served to the owner of the condominium unit or cooperative parcel by certified mail or personal service in the manner authorized by ch. 48, F.S.,¹⁶ and the Florida Rules of Civil Procedure.¹⁷

Liens against a parcel in a homeowners' association are currently subject to a notice requirement before the filing of a claim of lien against a parcel. Section 720.3085, F.S., provides that no claim of lien on a parcel in a homeowners' association may be filed until at least 45 days after the association has given a written notice or demand for the past due assessments.¹⁸

Effective Date

The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

¹⁶ Chapter 48, F.S., provides for process and service of process.

¹⁷ Rule 1.070, Fla.R.Civ.Pro., provides for service of process, and permits service of process by certified mail, return receipt requested.

¹⁸ Section 720.3085, F.S., provides other procedural requirements, including a 45-day notice requirement before bringing a foreclosure action, for liens against parcels in a homeowners' association.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
