

Civil Justice & Courts Policy Committee

HB 115 Residential Properties by Ambler:

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.

According to Ambler:

Virtually the same bill has passed unanimously the last two years. The only reason this is being discussed is because the Governor did not approve because of the lack of language about pools. Another point stressed during the presentation was that 75% of Floridians live in deed restricted communities, either Home Owners Associations or Condominium Owners Associations.

This bill offers opportunity for quick and inexpensive arbitration to avoid unnecessary court proceedings.

Home Owner Association Allegiances are in favor. In Pasco County the HOAA which represents over 40,000 people loved it.

Representative Flores was concerned that the bill will create more problems while searching for answers. The representative's worries were quelled quickly by Mr. Ambler's statistic above, as well as the note that an email campaign was the result of a few "radicals" organized by someone who doesn't live in Florida.

Representative Fetterman proposed two amendments that were adopted. These two amendments differed only in the language that one was for Home Owners Associations and the second one was for Condominium Owners Associations. The amendments were made to protect tenants from being penalized due to poor ownership of the leased home or condo.

This bill was voted 8-0 for favorable recommendation to the House.

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

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 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.

Mrs. Rogers simplified by saying, "This bill is designed to give tenants notice and make property owners more responsible."

Representative Fetterman felt that the intent of the bill was good, but the language regarding Notices of Foreclosure needed clarification. Representative Fetterman also wanted to gauge whether an amendment to eliminate some of the extraneous language and extraneous portions of the bill would be possible.

Mrs. Rogers made it very clear most of the bill was necessary in her opinion.

Representative Gibson motioned to temporarily postpone so possible amendments could be made. A temporary postponement was accepted.

Bill discussion was cut short due to crowded agenda and possible amendments.

HB 327 Community Associations by Robaina

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.

According to Robaina:

Intent of this bill is to jump start condominium sales in Florida. Investors are currently reluctant to get involved in distressed condominiums due to the massive liabilities involved in current situation. This bill alleviates some “developer” liabilities. It also changes the title of potential investors from “developers” to “bulk buyers” or “bulk assignees.” This bill could jump start the condominium market in Florida (stressed again). This bill is also not retroactive in any way. According to David Hart:

This bill is a top priority for the Florida Home Builders Association. This bill removes barriers to market recovery and makes a healthy market possible again. It is an important step in the right direction.

There was no debate or questions surrounding this bill. It was heard and voted upon very quickly. It was voted 9-0 for favorable recommendation.