



2013 Bulletin 16

New Rules for Condominiums, HOAs, Cooperatives

July 17, 2013

House Bill 73, Laws of Florida, ch. 2013-188, revises a number of technical details of operating a condominium or other association, but from a title perspective there are several revisions to existing law that should be noted as potentially impacting the title industry. Those include:

1. Phased Condominiums.

Prior law limited the time for completing all phases of a condominium to 7 years from the recording of the declaration of condominium. During the economic downturn, later phases of a planned and approved project were postponed and are now running up against (or over) that deadline. This bill amends §718.403, Fla. Stat. to allow an extension to up to 10 years from the recording of the declaration of the first phase.

However obtaining this extension requires the approval of the unit owners in the form of an amendment to the declaration of condominium, and further provides that the extension of the original 7 year period may only be submitted for approval during the last 3 years of the 7 year period.

The message here is watch the 7 year deadline for completing all phases of a phased condominium. If the deadline has been missed, even if extended, discuss it with your underwriter and work through the technical details and requirements with them.

2. Mortgagee Consents.

In 2007, Florida statutes were amended as to condominiums to reduce the need to obtain consents from every lender to amendments to the declaration of condominium when those amendments don't affect the rights or interests of the mortgage holders. The process of figuring out who really holds the mortgage, getting the information to them and actually getting enough to respond is an unreasonable and substantial logistical and financial burden on the unit owners. In 2007, the law was not changed as to cooperatives or HOAs.

This bill applies essentially the same standard to cooperatives and HOAs as was previously applied to condominiums. In new sections 719.1055(7) (cooperatives) and 720.306(1)(d) (HOAs), it provides:

- a. As to any mortgage recorded on or after July 1, 2013 [October 1, 2007 as to condos §718.110(11)(a)], a requirement in the documents for consent or joinder by a mortgagee is enforceable only as to amendments which adversely affect the

priority of the mortgage lien, or the mortgagee's rights to foreclose, or that otherwise materially affect the rights and interest of the mortgagee.

- b. As to mortgages recorded before July 1, 2013, the requirements for joinder or consent are enforceable.
- c. However, in obtaining mortgagee consents, the bill provides (as it already did for condominiums), that:
 - (i) the association is entitled to rely on the official records, and may use the address from the original mortgage unless there is a recorded amendment or assignment.
 - (ii) The association then is to request each unit owner to provide the name and address where payments are being made.
 - (iii) Notice is sent to both addresses, if different, by a method that establishes proof of delivery.
 - (iv) Any mortgagee who fails to respond within 60 days after the date of mailing is deemed to have consented to the amendment.
 - (v) Any consents (after July 1, 2013) that are not evidenced by a recorded joinder are to be evidenced by an affidavit of the association recorded in the official records.
- d. Any amendment adopted without the required consent of a mortgagee is voidable only by a mortgagee who was entitled to notice and an opportunity to consent (not the successor mortgage holder). The statute of limitations for challenges is five years after discovery if the amendment adversely affects the priority of the mortgage lien, the right to foreclose, or materially affect the rights and interest of the mortgagee, otherwise the statute runs five years after the recordation of the amendment.

The details on mortgage holder consents are complex and specific. If presented with questions, or having doubts about the validity of an amendment to the declaration, discuss it with your underwriter.

3. Condo within a Condo Provisions.

The bill creates new section 718.406 allowing the creation of a condominium within a condominium (think a vertical condominium created on a land condominium or a timeshare made up of units in an existing condominium). This is expected to be a rare occurrence, and one with lots of requirements and details, so consult your underwriter and the law.

Ch. 2013-188 took effect July 1, 2013.

[Full text of HB 73](#)

©Florida Land Title Association, 2013

Are You Getting the Most out of your FLTA Membership?
Getting involved with one of the [FLTA Committees](#) will help
you and your staff grow personally and professionally!
“Participate as if Your Livelihood Depended On It!”
Just One of the Many Benefits of Being a Proud FLTA Member