

## **WHITE PAPER**

### **HOMEOWNERS ASSOCIATION BULK COMMUNICATIONS AND INTERNET SERVICES CONTRACTS - PROPOSED REVISIONS TO SECTION 720.309, FLORIDA STATUTES**

#### **I. SUMMARY**

The purpose of the proposed changes to Section 720.309 is to clarify that homeowners associations have the authority to contract for communications and internet services on a bulk rate basis, to provide clear, defined procedures and provisions for entering into such bulk contracts, and to provide equal access to franchised service providers. These changes will provide similar provisions to those contained in Sections 718.115 and 718.1232, Florida Statutes, pertaining to condominium associations and condominium unit owners, and will make the laws consistent.

#### **II. SITUATION**

At present, Florida homeowners associations do not have a statutorily-authorized basis for entering into bulk rate communications, information and internet services contracts. Although there have been court decisions that give a homeowners association's board of directors broad authority to exercise its business judgment to enter into bulk cable television service agreements, this authority has not yet been included in Chapter 720, as it has been in Chapter 718 (the Florida Condominium Act) for many years. As a result, homeowners associations and their members have not been able to fully avail themselves of the substantial savings that result from such bulk contracts. As previously stated, Florida condominium associations have had the authority to enter into bulk communications contracts, and there is no reason for homeowners associations and their members not to be afforded the same authority. Further, the provision of Section 718.1232, Florida Statutes, which affords protection for condominium unit owners to have equal access to franchised services providers, should also be provided to residents of single-family homes subject to Chapter 720.

#### **III. EFFECT OF PROPOSED CHANGE**

The proposed amendments contract will grant authority for homeowners associations to enter into bulk rate contracts for communications and internet services. The proposed amendments also provide added protection to homeowners in that the proposal authorizes homeowners to vote to cancel any bulk rate communications or internet services contract if they disagree with the board of directors' decision in the matter. Currently, this owner right is not provided by the court decisions governing the matter. Further, the resident of a parcel (whether the parcel owner or a resident) will be afforded equal access to franchised service providers, in the same manner as afforded to condominium unit owners under Section 718.1232, Florida Statutes.

#### **IV. ANALYSIS**

The proposed amendments would clarify these important issues and be beneficial both for consumers and business interests.

Section 720.309(2) would be created. The subsection would provide that if the declaration of covenants and restrictions so provides, the cost of a bulk contract for communications services as defined under Chapter 202, information services or Internet services will be deemed an operating expense of the homeowners association. Further, if the authorizing provisions are not contained in the declaration of covenants and restrictions, the homeowners association's board of directors is authorized to enter into such a contract, and the cost of the service will be an operating expense but allocated on a per-unit basis rather than a percentage basis if the declaration provides for other than an equal sharing of operating expenses. Additionally, any contract entered into before July 1, 2011, in which the cost of the service is not equally divided among all homeowners, may be changed by the 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 homes. Provisions are created to permit the homeowners to vote to terminate a bulk rate contract entered into by the board of directors. Finally, certain defined homeowners are entitled to elect not to receive bulk services and will not be required to pay for the costs allocated to their property.

Section 720.309(3) would be created. The subsection would provide that any resident of any parcel (whether the parcel owner or a tenant) must be afforded access to any available franchised or licensed cable television service paid directly to the service provider by the resident. Further, such resident or cable television service shall not be required to pay anything of value in order to obtain or provide such service, except those charges normally paid for like services by other residents of single-family homes not located in the community but which are within the same franchised or licensed area, and except for installation charges as such charges may be agreed to between such resident and the provider of such services.

#### V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state or local governments.

#### VI. DIRECT IMPACT ON PRIVATE SECTOR

The proposal will allow homeowners associations and their members to avail themselves of bulk rate communications and internet services contracts, thereby enabling a cost savings and having a positive impact on the private sector.

#### VII. CONSTITUTIONAL ISSUES

There are no constitutional issues raised by this proposal.

#### VIII. OTHER INTERESTED PARTIES

Communications providers