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 1222
INTRODUCER:	Senator Ring
SUBJECT:	Condominiums
DATE:	February 26, 2010
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			BI	
3.			CA	
4.			JU	
5.				
6.				

I. Summary:

The bill revises laws related to community associations, including condominium, homeowners', and cooperative associations. The bill permits condominium, cooperative, and homeowners' associations to demand payment of any future regular assessments from the tenant of a unit or parcel owner. The bill revises and clarifies the property insurance requirements of condominium associations and condominium unit owners under ch. 718, F.S.

The bill repeals the requirement that condominium unit owners must maintain property insurance coverage and the requirement that the condominium association must be an additional named insured and loss payee on policies issued to unit owners. It repeals the provision that a condominium association may purchase property insurance at the expense of the owner when the unit owner does not provide proof of insurance.

Regarding condominium associations, the bill also:

- Exempts one or two story condominiums which have an exterior means of egress corridor from installing a manual fire alarm system required by the Life Safety Code;
- Revises requirements related to the election of board members, the terms of board offices, vacancies on the board, and the qualifications of board members. It provides for a post-election certification by each newly elected or appointed director, and permits completion of the educational curriculum as an alternative to a written certification;
- Expands the forms of information in the association's records that are not accessible to unit owners to include disciplinary, health, insurance, personnel records, and passwords;

- Repeals the prohibition that condominium associations may not vote to forego the retrofitting with a fire sprinkler system of common areas in a high-rise building, and permits associations to vote every three years to forego the retrofitting requirements; and
- Includes communication services, information services, and Internet services within the scope of the types of bulk contracts that may be considered common expenses.

The bill creates the "Distressed Condominium Relief Act" to define the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties.

The bill repeals the requirement for emergency generated power for elevators in high-rise multifamily dwellings over 75 feet in height.

The bill would take effect upon becoming law.

This bill substantially amends the following sections of the Florida Statutes:, 627.714, 633.0215, 718.103, 718.111, 718.112, 718.115, and 718.301.

This bill creates the following sections of the Florida Statutes: 718.701, 718.702, 718.703, 718.704, 718.705, 718.706, 718.707, 718.708, 723.071.

This bill repeals section 553.509(2), Florida Statutes.

II. Present Situation:

Condominiums

A condominium is a "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."[1] A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.[2] A declaration is like a constitution in that it:

> Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.[3]

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.[4] A declaration of condominium may be amended as provided in the declaration. If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners

[1] Section 718.103(11), F.S.
[2] Section 718.104(2), F.S.
[3] *Neuman v. Grand View at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003).
[4] Section 718.104(5), F.S.

of two-thirds of the units.[5] Condominiums are administered by a board of directors referred to as a "board of administration."[6]

Division of Condominiums, Timeshares, and Mobile Homes

Condominiums are regulated by the Division of Condominiums, Timeshares, and Mobile Homes (division) of the Department of Business and Professional Regulation (department), in accordance with ch. 718, F.S.

Section 718.501(1), F.S., provides the duties of the division. It gives the division the complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., with respect to associations that are still under developer control. It also has the authority to investigate complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301, F.S. After control of the condominium is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S.

As part of the division's authority to investigate complaints, s. 718.501(1), F.S., provides the division with the authority to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

Assessments for Condominiums

Section 718.103(1), F.S., defines an "assessment" as the "share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner."

Section 718.103(24), F.S., defines a "special assessment" to mean "any assessment levied against a unit owner other than the assessment required by a budget adopted annually."

Condominium Insurance

In 2003, the Legislature established the property and casualty insuring responsibilities of the condominium association and those of the individual condominium unit owner under s. 718.111(11), F.S.[7] The legislation provided that on or after January 1, 2004, every hazard insurance policy provided to the association include coverage for specified portions of condominium property located inside and outside of the units as well as condominium property required to be covered under the declaration of condominium.[8] The law provided that the real or

[5] Section 718.110(1)(a), F.S.
[6] Section 718.103(4), F.S.
[7] Chapter 2003-14, L.O.F.
[8] *See* Florida Office of Insurance Regulation (OIR), *Condominium Insurance Report.* November 19, 2004. Condominium associations purchase commercial residential property insurance policies in both the admitted and non-admitted markets in order to provide required insurance. The admitted market includes those insurers that are authorized to transact insurance in Florida and file forms and rates with the Office of Insurance Regulation pursuant to ss. 627.410 and 627.062, F.S. The non-admitted market includes those insurers that are eligible to provide coverage for risks that cannot be insured in the admitted market. These policies are written pursuant to ss. 626.913-626.937, F.S. (Surplus Lines law).

personal property located inside the boundaries of the owner's unit, which is excluded from coverage to be provided by the association, shall be insured by the individual unit owner.[9] In the 2007 Special Session, legislation was enacted clarifying that the above provisions apply to "residential" condominiums.[10]

The legislation further provided that windstorm insurance coverage for a group of three or more communities operating under the Condominium Act (ch. 718, F.S.) may be obtained if the coverage is sufficient to cover an amount equal to the probable maximum loss for communities for a 250-year windstorm event.

In 2008, comprehensive condominium legislation was enacted in ch. 2008-240, L.O.F., to revise and clarify the insurance requirements in s. 718.111(11), F.S., for condominium associations and unit owners. The act specifies that adequate hazard insurance[11] required by the association be based on the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The full insurable value must be determined at least every 36 months.[12]

Section 718.111(11)(c), F.S., permits the association to determine the insurance deductibles on the basis of available funds and predetermined assessment authority at a meeting of the board. The meeting notice must state the proposed deductible and the funds and assessment authority relied upon by the board and estimate any potential assessment amount against each unit, if any. Such meeting may be held in conjunction with a meeting to consider the proposed budget.

Section 718.111(11)(g), F.S., specifies the provisions that must be contained in every hazard insurance policy issued or renewed on or after January 1, 2009, to an individual unit owner. Such policy must contain a provision providing that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property. Also, such policies must include a special assessment coverage[13] of not less than $2,000 per occurrence. However, such a policy issued to an individual unit owner does not provide rights of subrogation against the condominium association operating the condominium in which such individual's unit is located. Improvements or additions which do not benefit all of the unit owners must be insured by the unit owner or owners who use the improvements or additions.

[9] Condominium unit owners generally purchase personal residential property insurance policies in both the admitted and non-admitted markets in order to provide required coverage.
[10] Chapter 2007-1, L.O.F.
[11] Hazard insurance is not a usual or customary term under the Insurance Code. The term "property" insurance is utilized under the Code and refers to real or personal property.
[12] Section 718.111(11)(a), F.S.
[13] The Insurance Code does not define the term "special assessment coverage." In a letter to the OIR Commissioner, Senator Jones (a sponsor of the 2008 legislation) stated that the use of the term "special assessment" had caused some confusion and that it was the intent of the legislature that this term only apply to assessments for loss, as opposed to assessments for routine maintenance and upkeep, such as painting and repaving. It was not the intent of the sponsor to create a new liability for assessments that were not triggered by loss. *See*, Letter from Senator Jones to Commissioner McCarty (September 8, 2008) on file with the Senate Banking and Insurance Committee. Under s. 718.103(1), F.S., an "assessment" is defined as the "share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner." Section 718.103(24), F.S., defines a "special assessment" as "any assessment levied against a unit owner other than the assessment required by a budget adopted annually."

Alternatively, the association may insure the improvements or additions at the expense of the unit owners who use them.

Chapter 2008-240, L.O.F., mandated that unit owners provide evidence of their hazard and liability insurance policy to the association upon request, but not more than once per year. If the unit owner fails to provide their certificate of insurance within 30 days of the delivery of the written request by the association, the association may purchase a policy on behalf of the unit owner. The unit owner is responsible for the cost of the policy and for any reconstruction costs incurred by the association. These costs may be collected as assessments under s. 718.116, F.S. Chapter 2008-240, L.O.F., further provided that the association must be an additional named insured and loss payee on all casualty insurance policies issued to unit owners in the condominium operated by the association.

Loss Assessment Coverage and Deductibles

In general, all condominium unit owner property insurance policies provide for loss assessment coverage.[14] Effective January 1, 2009, those policies are required to include an assessment coverage of not less than $2,000 per occurrence, pursuant to ch. 2008-240, L.O.F. Most policies provide that unit owners may increase this limit up to $50,000. Under the typical loss assessment provision, the insurer will pay up to the policy limit for the insured's share of loss assessment charged during the policy period against the insured by the condominium association when the assessment is made as a result of direct loss to the property owned by all members collectively and caused by the insured peril.

The policy limit is the most the insurer will pay with respect to any one loss, regardless of the number of assessments. The triggered event for the loss assessment coverage is an assessment by the association taking place during the policy period and the date of the occurrence that generated the assessment is not a factor. If the assessment is made during the policy period, even if the actual occurrence causing the property damage took place prior to the effective date of the policy, then the triggering criteria have been met. In order for the assessment to be covered under the policy, the peril causing the loss must be a covered peril under the unit owner's policy.

Most property insurance policies have an all-other-peril (AOP) deductible of $500, which applies to loss assessment claims.[15] However, with the passage of ch. 2008-240, L.O.F., the Office of Insurance Regulation (OIR) has taken the position that a deductible does not apply to loss assessment coverage under a unit owner's policy. Representatives with the OIR state that the Insurance Services Office forms approved prior to the passage of ch. 2008-240, L.O.F., do apply a policy deductible for loss assessment claims.

[14] The Insurance Services Office (ISO) writes and provides to insurers standard condominium unit owner property insurance policy forms (HO-6 policies) which contain loss assessment coverage provisions. While not all insurers use ISO forms, the coverage provisions provided by those insurers often closely track the ISO forms.
[15] A deductible is the amount an insured must pay before the insurance coverage applies to a covered loss.

Condominium – Elections

Section 718.112(2)(d)3., F.S., requires a person desiring to be a candidate for election to the board of administration of a condominium association to qualify for office at least 40 days before the election. A condition of qualifying is that the candidate must certify that he or she has read and understands, to the best of his or her ability, the governing documents of the association and the provisions of ch. 718, F.S., and any applicable administrative rules. This signed certification must be included with the ballot.

Condominium - Fire Sprinkler Retrofitting

Section 633.0215(2), F.S., enacted in 1998,[16] is a part of the insurance law. The act requires the State Fire Marshal to "adopt the National Fire Pamphlet 101, current editions, by reference." Chapter 2000-141, L.O.F., amended the original effective date of the act from July 1, 1999 to July 1, 2001. Subsequently, ch. 2001-186, L.O.F, amended the effective date of the act to January 1, 2002. The act includes a requirement that certain existing multi-family structures be retrofitted with fire sprinkler systems within 12 years of the effective date of the act. As a result, some older condominium buildings are required to complete the installation of fire sprinkler systems by January 1, 2014, unless a change is made to the standards. Multi-family structures three stories or taller constructed since 1994 have been required to have installed sprinkler systems when first built. Some local building codes have required sprinklers upon initial construction earlier or on shorter multi-family buildings.

Section 718.112(2)(l), F.S., provides that, notwithstanding the provisions of ch. 633, F.S., or any other code, statute, ordinance, administrative rule, or regulation, a condominium association or unit owner is not obligated to retrofit the common elements or units of a residential condominium with a fire sprinkler system or other engineered life safety systems in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting and engineered life safety systems by the affirmative vote of two-thirds of all voting interests in the affected condominium.

However, a condominium association may not vote to forego the retrofitting with a fire sprinkler system of common areas in a high-rise building, which is defined as a building that is greater than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest story that can be occupied.

Condominiums – Implied Warranties

One of the effects of the downturn in the housing market is the large number of uncompleted condominium buildings, some of which have outstanding purchase contracts, for some or all of the units, and some of which are in a completed building with a large number of unfinished units. Generally, these assets, typically condominium units, are acquired by investors as bulk acquisitions and the acquisitions take place in one of two forms:

[16] *See* s. 58, ch. 98-287, L.O.F.

- The assets are purchased from developers or banks that have foreclosed on the development loan or on the property, or
- The assets are acquired through the purchase of discounted debt from lenders.

The purchase and sale of condominium units can involve additional expenses, construction delays, rescinded purchase contracts, regulatory and legal actions, slower sales, third-party claims, reduced rental rates, failed financial models, and the retention of developer rights by the bulk acquisition agent. Other considerations are the liabilities and obligations that the purchaser may incur for construction defects and warranty claims.

Section 718.203, F.S., provides that the developer of a condominium is deemed to have granted to the purchaser of each unit an implied warranty of fitness and merchantability for 3 years beginning with the completion of the building containing the unit, and a warranty for the same period that is provided by the manufacturer for personal property transferred with or appurtenant to the unit. For all other improvements, the implied warranty is for 3 years beginning with the date of completion of the improvements. For the roof and structural components of a building or other improvements, or for the mechanical, electrical, and plumbing elements serving a building or improvement, the warranty is for a 3-year period beginning with the completion of construction of the building or improvement, or for 1 year after the developer transfers control of the condominium association. In no event may the warranty extend for more than 5 years.

Unit owners have a right to bring an action for an implied warranty claim[17] and the association has a right to act on behalf of the unit owners in matters of common interest.[18]

In *Chotka v. Fieldco Growth Investors*,[19] the defendant construction lender had foreclosed against the developer for defaulting on the construction loan. The plaintiff condominium residents association sued the construction lender for damages and defects or omissions relating to construction defects of the condominium building and common areas. The trial court dismissed the implied warranty claim of the condominium association. The Second District Court of Appeals reversed and found that:

> where the lender took title to the condominium project, completed construction, and while holding itself out as the developer and owner of the project, advertised and sold units to purchasers, the lender became a developer of the project to the extent that it might be held liable for performance of express representations made to buyers, for patent construction defects in the entire condominium project, and for breach of any applicable warranties due to defects in the portions of the project completed by it.

[17] *Rogers & Ford Construction Corporation, etc., et al v. Carlandia Corporation,* 626 So.2d 1350 (Fla. 1993).
[18] *Charley Toppino & Sons, Inc. v. Seawatch at Marathon Condominium Association, Inc.*, 658 So.2d 922 (Fla. 1995).
[19] *Chotka v. Fieldco Growth Investors,* 383 So.2d 1169 (Fla. 1980).

Alternate Power Generators for Elevators

During the 2006 Regular Session, s. 553.509(2)(a), F.S.,[20] was enacted to require that any person, firm, or corporation that owns, manages, or operates a residential multi-family dwelling, including a condominium, which is at least 75 feet high (high-rise residential buildings) and contains a public elevator, have at least one elevator capable of operating on alternate generated power. In the event of a general power outage, this elevator must ensure that residents have building access for an unspecified number of hours each day over a five-day period following a natural or manmade disaster, emergency, or other civil disturbance. The alternate generated power source must be capable of powering any connected fire alarm system in the building.

The alternate generated power requirements of s. 553.509(2), F.S., do not apply to high-rise buildings that were in existence on October 1, 1997, or which were either under construction or under contract for construction on October 1, 1997.[21] Newly constructed residential multi-family dwellings meeting the criteria of this section must meet the engineering, installation, and verification requirements of s. 553.509(2), F.S., before occupancy.[22]

Section 553.509(2)(b), F.S., provides that, at a minimum, the elevator must be appropriately pre-wired and prepared to accept alternate generated power. The power source must be capable of powering the elevator, a connected building fire alarm system, and emergency lighting in the internal lobbies, hallways, and other internal public portions of the building. The dwellings must either have a generator and fuel source on the property or proof of a current guaranteed service contract providing such equipment and fuel source within 24 hours of a request. Proof of a current service contract for such equipment and fuel must be posted in the elevator machine room or other place conspicuous to the elevator inspector.

Verification Requirements – Section 553.509(2)(b), F.S., requires that the person, firm, or corporation that owns, manages, or operates a building affected by this requirement must provide to the local building inspection agency verification of engineering plans for alternate generated power capability by December 31, 2006. The local building inspectors must verify the installation and operational capability of the alternate generated power source and report to the county emergency management director by December 31, 2007.

Posting Requirements - The owner, manager, or operator of the high-rise residential building must keep written records of any contracts for alternative power generation equipment and fuel source.[23] Quarterly inspection records of lifesafety equipment and alternate power generation equipment must also be posted in the elevator machine room or other place conspicuous to the elevator inspector.[24]

Emergency Operations Plan Requirements – Section 553.509(2)(d), F.S., requires that each person, firm, or corporation that is required to maintain an alternate power source must also

[20] Section 12, ch. 2006-71, L.O.F.
[21] Section 553.507, F.S., exempts such buildings, structures, and facilities from the provisions of ss. 553.501-553.513, F.S., the "Florida Americans with Disabilities Implementation Act."
[22] Section 553.509(2)(c), F.S.
[23] Section 553.509(2)(b), F.S.
[24] Section 553.509(2)(d), F.S.

maintain a written emergency operations plan that details the sequence of operations before, during, and after a natural or manmade disaster or other emergency situation. The plan must include, at a minimum, a lifesafety plan for evacuation, maintenance of the electrical and lighting supply, and provisions for the health, safety, and welfare of the residents.

The written emergency operations plan and inspection records must be open for periodic inspection by local and state government agencies.[25] The owner or operator must keep a generator key in a lockbox posted at or near any installed generator unit.[26]

Residential Dwellings for Persons Age 62 and Older – Section 553.509(2)(e), F.S., requires that multi-story affordable residential dwellings for persons age 62 and older that are financed or insured by the United States Department of Housing and Urban Development must make every effort to obtain grant funding from the Federal Government or the Florida Housing Finance Corporation to comply with the requirements of s. 553.509(2), F.S. It provides that, if an owner of such a residential dwelling cannot comply with the requirements of this subsection, the owner must develop a plan with the local emergency management agency to ensure that residents are evacuated to a place of safety in the event of a power outage resulting from a natural or manmade disaster or other emergency situation that disrupts the normal supply of electricity for an extended period of time. A place of safety may include, but is not limited to, relocation to an alternative site within the building or evacuation to a local shelter.

Inspections – Section 553.509(2)(f), F.S., requires that certified elevator inspectors confirm that all installed generators are in working order, the elevators have current inspection records posted, and a generator key located near the generator. If there is no installed generator, the inspector is required to confirm that the appropriate pre-wiring and switching capabilities are present and that the guaranteed contingent service contract is posted.

Interim Report 2009-125 – Review of Elevator Safety and Regulation - The October 2008 interim report prepared by the Senate Regulated Industries Committee also studied the extent of compliance with s. 553.509(2), F.S., and reviewed the problems that citizens and governmental agencies have had in implementing these requirements. Senate professional staff recommended that the Legislature consider the repeal of s. 553.509(2), F.S. The repeal recommendation was based upon the following findings and conclusions:

- The requirement may pose a threat to public safety, i.e., the availability of emergency power for elevators during the five days after a declared state of emergency may encourage persons to stay in high-rise buildings and areas that are not safe and do not have the necessary infrastructure for safe habitation;
- The requirement does not have a clearly defined state or local agency that is responsible for its on-going enforcement;
- Enforcement of the requirement by a state agency would carry a fiscal burden without a clearly defined benefit that may out-weigh the public safety concerns;
- The requirement does not appear to have any clearly defined impact on elevator safety;

[25] *Id.*
[26] *Id.*

- It is not clear what penalty, if any, should be imposed on building owners who cannot comply with the requirement because they cannot afford the expense; and
- To the extent that an alternate emergency power for elevators provides a public benefit, the Florida Building Code currently requires emergency power for elevators in new high-rise residential construction.

Alternatively, the professional staff recommended that the Legislature could continue to require emergency generated power pursuant to s. 553.509(2), F.S., but, to ensure uniform compliance, provide funding for the Bureau of Elevator Safety within the Division of Hotels and Restaurants, Department of Business and Professional Regulation, for the enforcement of this provision.

III. Effect of Proposed Changes:

Condominium Insurance

The bill creates s. 627.714, F.S., pertaining to condominium unit owner coverage and loss assessment coverage. For policies issued or renewed on or after July 1, 2009, a residential condominium unit owner's policy must include loss assessment coverage of at least $2,000, for all assessments made as a result of the same direct loss to the association property, regardless of the number of assessments. The loss must be of the type of loss covered by the unit owner's residential property insurance policy. The bill authorizes insurers to apply a deductible of no more than $250 per direct property loss. A deductible does not apply if a deductible has been applied to other property loss sustained by the unit owner for the same direct loss to the property.

Section 627.714, F.S., would require every property insurance policy issued or renewed to an individual unit owner to contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property.

The bill amends s. 718.111(11), F.S., pertaining to condominium insurance. The bill changes terminology by deleting the terms "hazard" and "casualty" in referring to insurance in multiple paragraphs in this subsection and replaces those terms with the term "property." Property insurance is insurance on real or personal property and is the usual and customary term used in the Insurance Code.[27] Casualty insurance[28] refers to liability insurance and is not the appropriate term to be used in this context and hazard insurance is not a usual or customary term under the Insurance Code.

The bill clarifies that adequate property insurance shall not be based upon the "full insurable value" of the property, but must be based on the "replacement cost" of the property to be insured, which must be determined at least once every 36 months. The bill provides that property insurance policies or programs that were originally issued before January 1, 2000, and that have provided uninterrupted coverage for a group of at least three communities is not subject to

[27] Property insurance is defined under s. 624.604, F.S. The Insurance Code consists of chs. 624-632, 634, 635, 636, 641, 648, and 651, F.S. Under s. 624.604, F.S., property insurance is defined as insurance on real or personal property of every kind and of every interest, whether on land, water, or in the air, against loss or damage from all hazards or causes, and against loss consequential upon such loss or damage, other than noncontractual legal liability for any such loss or damage.
[28] Casualty insurance is defined under s. 624.605, F.S.

review and approval by the Office of Insurance Regulation until renewed after July 1, 2009. Such coverage or program may not exist beyond July 1, 2010.

The bill deletes the requirement in s.718.111(11)(c)3., F.S., that the board meeting notice state the proposed deductible and the available funds, the assessment authority relied upon by the board, and the estimate of the potential assessment amount against each unit, if any. The bill also removes the provision which permitted the board meetings to be held in conjunction with a meeting to consider the proposed budget or budget amendment.

The bill clarifies, in s. 718.111(11)(f)3., F.S., that the property that is excluded from the association's insurance coverage (i.e., the personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the forgoing) is located within the boundaries of the unit and serve only such unit. The bill further clarifies that the excluded property is the responsibility of the unit owner and the unit owner's insurance.

The bill amends s. 718.111(11)(g), F.S., to provide that the unit owner's insurance policy issued after October 1, 2009, must conform to the requirements of s. 627.714, F.S. The bill deletes the following provisions from s. 718.111(11)(g), F.S.:

- A unit owner's hazard insurance policy, issued or renewed on or after January 1, 2009, must contain a provision stating that the policy coverage is excess coverage over the amount recoverable under any other policy covering the same property.
- A unit owner's hazard insurance policy must include special assessment coverage of $2,000 per occurrence.
- A unit owner's hazard insurance policy does not provide the right of subrogation against the unit owner's condominium association.
- All improvements or additions to the condominium property that benefit fewer than all unit owners must be insured by the unit owner or owners having the use thereof, or may be insured by the association at the cost and expense of the unit owners having such use.
- The association may require each owner to provide evidence of a hazard and liability insurance upon request, but not more than once per year.
- Should the unit owner fail to provide hazard and liability insurance upon written request within 30 days, the association may purchase a policy on the owner's behalf and the unit owner is responsible for the cost of the policy and for any reconstruction costs incurred by the association and such costs may be collected as assessments under s. 718.116, F.S.[29]
- The association must be an additional named insured and loss payee on all casualty insurance policies issued to unit owners in the condominium operated by the association.

[29] Section 718.116, F.S., authorizes condominium associations to place a lien on the condominium unit for failure to pay the assessment. It also provides for interest, if the declaration or bylaws so provide, to accrue at the rate of 18 percent per year, and for late fees not to exceed the greater of $25 or 5 percent.

Fire Alarm Systems

The bill amends s. 633.0215, F.S., the Florida Fire Prevention Code, to exempt one or two story condominiums which have an exterior means of egress corridor from installing a manual fire alarm system required by the Life Safety Code adopted in the Fire Prevention Code.

Bylaws – Board Members

The bill amends s. 718.112(2)(d)1., F.S., to exempt timeshares condominium from the requirement that the terms of all members of the board expire at the annual meeting.

The bill amends s. 718.112(2)(d)1., F.S., to provide that board members whose terms have expired become automatically eligible for reappointment and need not stand for reelection if the number of board members whose terms have expired exceeds the number of eligible members showing interest in or demonstrating an intention to run for the vacant positions. Current law provides for automatic reappointment to the board.

The bill provides an exception to the prohibition against co-owners of a unit serving on the board at the same time. The bill would permit co-owners who own more than one unit and are not co-occupants of a unit to serve on the board at the same time. Co-owners may also serve at the same time if there are not enough owners to fill the vacancies on the board.

The bill provides that persons who are delinquent in the payment of a fine or special or regular assessment are not eligible for board membership. Current law only disqualifies persons from board membership who are delinquent in the payment of a fee or assessment.

The bill also amends s. 718.112(2)(d)3., F.S., to delete the requirement for a pre-election certification by candidates to the condominium board. It requires candidates for the board to give a written notice to the association of his or her intent to be a candidate.

The bill creates s. 718.112(d)3.b., F.S., to provide a post-election certification requirement for newly elected board members. Within 90 days of being elected or appointed, a new board member must certify that he or she:

- Has read the declaration of condominium for all condominiums operated by the association and the association's articles of incorporation, bylaws, and rules and regulations;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider. This course must have been completed within one year before the 90-day deadline.

The bill provides that a board member is automatically disqualified from service on the board if he or she fails to timely file the written certification or educational certificate. The secretary of

the association must keep the written certification or educational certificate for inspection by the members for five years after a director's election or appointment. The bill also provides that the validity of any appropriate action is not affected by the association's failure to have certification on file.

Fire Sprinkler Systems

The bill amends s. 718.112(2)(l), F.S., to repeal the prohibition that condominium associations may not vote to forego the retrofitting with a fire sprinkler system of common areas in a high-rise building.

The bill also amends s. 718.112(2**)(**l), F.S., to extend the deadline for the retrofitting of sprinkler systems in high-rise condominiums from 2014 to 2019. It also prohibits local authorities to require completion or retrofitting with other engineered lifesafety systems. It deletes the reference to common areas.

The bill creates a new s. 718.112(2)(l)2., F.S., to provide that an association may, once every 3 years, vote to forego the retrofitting at a special meeting of the unit owners called by a petition of at least 25 percent of the voting interests. The notice for the meeting must state the purpose of the meeting and the notice may not be given through electronic transmission. In current law, s. 718.112(2)(l), F.S., requires a two-thirds vote of all voting interests to forego retrofitting of the common elements or units of a residential condominium with a fire sprinkler or other engineered lifesafety system.

Common Expenses and Common Surplus

The bill amends s. 718.115(1)(d)1, F.S., to provide that communication services, as defined in ch. 202, F.S.,[30] information services, or Internet services are included in the scope of the types of bulk contracts which are deemed a common expense. References to a master antenna television system or duly franchised cable television services are deleted.

The bill also amends s. 718.115(1)(d)1., F.S., to provide that a unit owners-controlled association may cancel any contract made by a developer-controlled association. The cancellation must be made within 120 days after the unit owners elect the majority of the board.

The bill also amends s. 718.115(1)(d)2., F.S., to clarify that cable or video service are the types of common expense services that may be discontinued by a hearing impaired or legally blind person, or by a person receiving supplemental security income or food stamps, without incurring a common expense charge, and adds video services in place of the current term "television" in regards to the type of expense, including cable, that must be shared equally by all participating unit owners if fewer than all unit owners share the expense. The bill also permits the association to make an assessment for video as well as cable services.

[30] Chapter 202, F.S., is the Communications Services Tax Simplification Law.

Condominium – Transfer of Association Control

The bill amends s. 718.301(1)(f), F.S., to provide that unit owners other than the developer are entitled to elect not less than a majority of the members of the association board except when a court determines within 30 days after appointment of a receiver for the developer that transfer of control to the owners would be detrimental to the association or its members.

Condominium – Bulk Buyers and Assignees

The bill creates part VII of ch. 718, F.S., consisting of ss. 718.701, 718.702, 718.703, 718.704, 718.705, 718.706, 718.707, and 718.708, F.S. Section 718.701, F.S., provides that part VII of ch. 718, F.S., may be cited as the "Distressed Condominium Relief Act."

The bill creates s. 718.702, F.S., to provide legislative findings and legislative intent. It provides the legislative finding that potential successor purchasers of condominium units are unwilling to accept the risk of purchase because the potential liabilities inherited from the original developer are imputed to the successor purchaser, including the foreclosing mortgagee. The bill provides the statement of legislative intent that it is the public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums.

Definitions

In order to incorporate the creation of the bulk buyer provision in part VII of ch. 718, F.S., the bill revises the definition of "developer" in s. 718.103(16), F.S., to include bulk assignees and bulk buyers.

The bill creates s. 718.703, F.S., to define "bulk assignee" as a person who acquires more than seven condominium parcels as provided in s. 718.707, F.S., and receives an assignment of some or substantially all of the rights of the developer as an exhibit in the deed or as a separate instrument recorded in the public records in the county where the condominium is located.

It also defines "bulk buyer" as a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of developer rights other than the right to:

- Conduct sales, leasing, and marketing activities within the condominium;
- Be exempt from making working capital contributions that arise out of or in connection with the bulk buyer's acquisition of a bulk number of units; and
- Be exempt from any rights of first refusal which may be held by the association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to any third-party purchaser concerning one or more units.

Assignment and Assumption of Developer Rights

The bill creates s. 718.704, F.S., relating to the assignment and assumption of developer rights, to provide that a bulk assignee assumes all the duties and responsibilities of the developer. The bulk assignee is not liable for:

- The warranties of a developer under s. 718.203(1) or 718.618, F.S., However, the bulk assignee would assume the warranties for design, construction, development, or repair work performed by or on behalf of the bulk assignee;
- The obligation to fund converter reserves for a unit not acquired by the bulk assignee,
- The obligation to provide converter warranties on any portion of the condo property except as provided in a contract for sale between the assignee and a new purchaser;
- Provide the condo association with a cumulative audit of the association's finances from the date of formation, except for the period that the bulk assignee elects a majority of the board; and
- The developer's failure to fund previous assessments or resolve budget deficits, but must provide an audit for the period in which the assignee elects a majority of the board members, except when the bulk assignee receives the assignment of rights of the developer to guarantee assessment levels and fund budget deficits.

The bulk assignee is responsible for delivering documents and materials as required by s. 718.705(3), F.S., which the bill creates to require the bulk assignee to comply with the nondeveloper disclosures in s. 718.503(2), F.S., before offering any units for sale or lease for a term exceeding five years.

A bulk assignee or bulk buyer that does not receive an assignment of the right of the developer to guarantee the level of assessments and fund budgetary deficits is not liable for the obligations of the developer with respect to the guarantee. However, the bulk assignee or bulk buyer is responsible for payment of assessments in the same manner as all other owners of condominium parcels. If the bulk assignee or bulk buyer does guarantee the level of assessments, then he or she is responsible for all of the developer's obligations in respect to the guarantee.

An acquirer of condominium parcels is not considered a bulk assignee or a bulk buyer if the transfer of parcels was done to hinder, delay, or defraud any purchaser, unit owner, or the association, or if the acquiring person or entity is considered an insider for purposes of fraudulent transfers under s. 726.102(7), F.S.

Developer rights may be assigned to a bulk assignee by the developer, by a previous bulk assignee, or by a court of competent jurisdiction acting on behalf of the developer or previous bulk assignee. The bill provides the following limitations on the assignment of developer rights:

- There may be more than one bulk buyer but not more than one bulk assignee within a condominium at any particular time.
- If more than one acquirer of condominium parcels receives an assignment of development rights from the same person, the bulk assignee is the acquirer who first records the assignment in the applicable public records.

Transfer to Unit Owner-Controlled Board

The bill creates s. 718.705, F.S., to provide for the transfer of control of the condominium board of administration to the unit owners other than the developer, if a bulk owner is entitled to elect a majority of the board members. The bill provides that the condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a buyer, or to be owned by anyone other than the developer, until the parcel is conveyed to a buyer who is not the bulk assignee.

The bill provides that all items required under s. 718.301(4), F.S.,[31] must be delivered by the bulk assignee to the board of administration.

If the bulk assignee is not in possession of such documents and materials during the period in which the assignee owned the majority of the condominium parcels, the assignee must undertake a good faith effort to obtain and deliver such documents and materials, and must certify in writing to the association an itemized list of documents and materials that could not be obtained by the assignee. The delivery of the certified list relieves the bulk assignee of all responsibility to deliver such documents and materials.

In a conflict between the provisions of s. 718.705, F.S., and s. 718.301, F.S., provisions of s. 718.705, F.S., prevail.

If a bulk assignee or a bulk buyer fails to comply with the provisions of part VII of ch. 718, F.S., all protections and exemptions provided in that part are lost.

Sale or Lease of Units by a Bulk Assignee or a Bulk Buyer

The bill creates s. 718.706, F.S., relating to the sale or lease of units by a bulk assignee or a bulk buyer. It provides that, prior to the sale or lease of units for a term of more than 5 years, a bulk assignee or a bulk buyer must file the following documents with the Division of Florida Condominiums, Timeshares and Mobile Homes in the Department of Business and Professional Regulation:

- Updated prospectus, offering circular, or a supplement, which must include the form of contract for purchase and sale in s. 718.503(1), F.S.;
- Updated Frequently Asked Questions and Answers sheet;
- Executed escrow agreement if required under s. 718.202, F.S., relating to sales or reservation deposits prior to closing; and
- Financial information required under s. 718.111(13), F.S. (association financial report for preceding fiscal year), unless the report does not exist for the fiscal year before the acquisition by the bulk assignee or the accounting records cannot be obtained in good faith, in which case notice requirements must be met.

[31] Section 718.301(4), F.S., sets forth the documents that the developer must transfer to the association after the unit owners elect the majority of the board. These records include, but are not limited to, the recorded condominium declaration and all amendments, a certified copy of the association's articles of incorporation, bylaws, minutes, financial records, association funds or control of such funds, association tangible personal property, plans and specifications used in the construction of the condominium, insurance contracts, and a common elements turnover inspection report under seal of a state licensed architect or engineer.

Prior to the sale or lease of units for a term of more than five years, a bulk assignee must file with the Division of Florida Condominiums, Timeshares and Mobile Homes in the Department of Business and Professional Regulation, a disclosure statement that includes, but is not limited to, the following:

- A description of any rights of the developer assigned to the bulk assignee;
- A statement relating to the seller's limited liability for warranties of the developer; and
- If the condominium is subject to conversion, a statement relating to the seller's limited obligation to fund converter reserves or to provide converter warranties under s. 718.618, F.S., relating to converter reserve accounts.

Prior to the sale or lease of a unit for a term of more than five years, the bulk assignee or bulk buyer must comply with the nondeveloper disclosure requirements of s. 718.503(2), F.S., relating to disclosures by unit owners prior to the sale of a unit.

There is a potential conflict in the disclosure requirements set forth in s. 718.706, F.S. Section 718.706(1), F.S., requires bulk assignees and bulk buyers to comply with the developer disclosure requirements in s. 718.503(1)(a), F.S., which provides contract form language that has a written notice to the purchaser of the right to rescind the contract within 15 days. However, the bill creates s. 718.706(3), F.S., to also require bulk assignees and bulk buyers to provide the non-developer disclosure requirements in s.718.503(2), F.S. However, s. 718.503(2), also has contract notice language, but that notice provides a three-day right to rescind.

The bill prohibits the waiver of reserves or reduction of reserve funding and the use of reserve expenditures for other purposes unless approved by a majority of the voting interests not under the control of the developer, the bulk assignee, and the bulk buyer.

A bulk assignee in control of the association board of administration must comply with the requirements imposed on developers to transfer control of the association as required under s 718.301, F.S.

A bulk assignee or a bulk buyer must comply with the requirements of s. 718.301, F.S., regarding contracts entered into by the association during the period the assignee or buyer maintains control of the association's board of administration.

Unit owners must be afforded all of the protections contained in s. 718.302, F.S., regarding certain agreements.

A bulk buyer must comply with the requirements of the declaration regarding the transfer of any unit by sale, lease or sublease. No exemptions afforded to a developer regarding the sale, lease, sublease, or transfer of a unit are afforded to a bulk buyer.

Time Limitations

The bill creates s. 718.707, F.S., to provide a time limitation for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee

or a bulk buyer unless the parcels were acquired prior to July 1, 2011. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

Liabilities of Developers and Others

The bill creates s. 718.708, F.S., to provide that an assignment of developer rights does not release the developer from any liabilities under the condominium declaration or ch. 718, F.S. The creating developer's liability is not limited to claims brought by unit owners, bulk assignees, or bulk buyers for violations of ch. 718, F.S., unless specifically excluded.

The bill provides that nothing in the act waives, releases, compromises, or limits the liability of contractors, subcontractors, materialmen, manufacturers, architects, engineers, or any participant in the design or construction of a condominium for any claim brought by the association, unit owners, bulk assignees, or bulk buyers relating to the design, construction defects, misrepresentations, or violations of ch. 718, F.S., except as provided in the act.

Alternate Power Generators for Elevators

The bill repeals the requirement for emergency generated power for elevators in high-rise multifamily dwellings over 75 feet in height in s. 553.509(2), F.S.

Effective Date

The bill would take effect upon becoming law.

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:

Condominium unit owners will benefit under the bill's provisions by not having to obtain property insurance coverage on their unit and by not having their association be an additional named insured and loss payee on their policy. However, if they wish to purchase such insurance, they must obtain $2,000 of loss assessment coverage, after any applicable deductible is due under the policy. The deductible may not exceed $250 per direct property loss.

Condominium associations that vote to forego retrofitting requirements for fire sprinkler systems and other lifesafety systems pursuant to s. 718.112(2)(l), F.S., would be able to save the expense of the retrofit.

The Department of Business and Professional Regulation noted that the bill should result in more bulk investors getting into the business and that should improve the financial position of condominium associations in which a significant number of units are unsold and unoccupied. The department also stated that the purchase of unsold inventory would have a positive effect on the depressed condominium market.

The bill repeals the alternate emergency generated power requirement for elevators in high-rise residential dwellings in s. 553.509, F.S. The repeal of this provision may save the owners of such building the costs of compliance with the requirement. It is estimated by industry representatives that the cost to engineer and install the appropriate generator wiring, coupling, and transfer switch is approximately $4,000 to $6,000 per location. Options to power an elevator by portable generator include purchase and guaranteed services contracts in which a second party provides the generator, maintenance, and servicing for a fee. Costs for purchasing a generator are dependent on each individual application. As an approximate general rule, standby generators cost $300 to $500 per kilo-watt. Thus, a 20 KW standby generator would cost between $6,000 and $10,000. A 100 KW generator would cost between $30,000 and $50,000. The cost of a guaranteed services contract would be subject to many variables and is unknown. However, it is likely to be considerably less than the cost of a purchased generator.

C. Government Sector Impact:

VI. Technical Deficiencies:

There is a potential conflict in the disclosure requirements set forth in s. 718.706, F.S. Section 718.706(1), F.S., requires bulk assignees and bulk buyers to comply with the developer disclosure requirements in s. 718.503(1)(a), F.S., which provides contract form language that has a written notice to the purchaser of the right to rescind the contract within 15 days. However, the bill creates s. 718.706(3), F.S., to also require bulk assignees and bulk buyers to provide the non-developer disclosure requirements in s.718.503(2), F.S. However, s. 718.503(2), also has contract notice language, but that notice provides a three-day right to rescind.

VII. Related Issues:

The department was concerned that removing "bulk assignee" and "bulk buyer" from the definition of "developer" may be inconsistent with the newly created ss. 718.703(1), 718.704, and 718.705. The department indicated that "offering condominium units to the public for sale or long-term lease is a developer activity." If the bulk assignees and buyers are excluded from the definition of developers, then the bill would limit the Division of Florida Condominiums, Timeshares, and Mobile Homes' jurisdiction to regulating access to records, financial matters, election disputes, and maintenance of the common elements issues, by association boards controlled by the bulk owner under 718.501(1), F.S. The division does not have the authority to regulate the turnover of control provisions of non-developer entities.

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.