

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 Committee on Regulated Industries

BILL: SB 436

INTRODUCER: Senator Altman

SUBJECT: Residential Properties

DATE: February 18, 2013 REVISED: _____

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

I. Summary:

The bill revises several provisions relating to the governance of condominium, cooperative, and homeowners' associations.

The bill prohibits the enforcement of the Phase II Firefighter's Service requirement for existing elevators until the elevator is replaced or the elevator requires major modification. This requirement permits the operation and exclusive control of an elevator by firefighters for evacuating the physically disabled in occupied buildings and for moving firefighters and equipment during an emergency.

Regarding condominiums, the bill:

- Clarifies that broadcast notice by closed-circuit television may be made in lieu of a notice posted physically on the condominium property.
- Clarifies that the board must maintain a copy of a board member's post election certification for at least 5 years or the duration of the board member's tenure, whichever is longer;
- Revises the hurricane protection provisions to include impact glass, code-compliant windows and doors, and other types of code-compliant hurricane protection and clarifies the conditions for a unit owner to receive credit for the prior installation of hurricane protection;
- Extends to 10 years from 7 years the period for completion of all phases of a phase condominium;
- Provides for the creation of a secondary condominium within a primary condominium;

- Permits officers or full-time employees of the condominium ombudsman's office to engage in another profession or any other business that is not directly or indirectly related, or conflicts with, his or her work in the ombudsman's office; and

Regarding cooperative associations, the bill provides that meetings of the board held for the purpose of discussing personnel matters are not subject to the open meetings requirement. It also expands the types of official records that are not accessible to members of the association, including records containing specified personal identifying information. The bill also requires newly elected or appointed members of the cooperative board to provide a post-election certification that they have read the governing documents of the association, or alternatively, to submit a certification showing the satisfactory completion of the educational curriculum within 1 year before the election or 90 days after the election or appointment.

Regarding homeowners' associations, the bill includes the personnel records of the management company among the records that are not accessible to the association's members. It also deletes the condition that the parcel owner must submit a written request to speak prior to the meeting in order to exercise his or her right to speak at a meeting.

Regarding cooperative and homeowners' associations, the bill provides a process for amending association documents without the approval of all mortgagees.

Regarding condominium, cooperative, and homeowners' associations, the bill:

- Requires that any challenge to the election process be commenced within 60 days after the election results are announced;
- Prohibits election recalls when there are less than 60 days before the next election; and
- Provides that the suspension of an owner's rights does not apply to limited common elements that are intended to be used only by that owner, common elements needed to access the unit or home, utility services to the unit or home, parking spaces, or elevators, and that suspended interests are not needed for establishing a quorum, conducting an election, or obtaining member approval.

The bill provides an effective date of July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 399.02, 718.112, 718.113, 718.115, 718.303, 718.403, 718.5011, 719.104, 719.1055, 719.106, 719.303, 720.303, 720.305, and 720.306. This bill creates section 718.406, Florida Statutes.

II. Present Situation:

Elevator Regulation

Chapter 399, F.S., the "Elevator Safety Act,"¹ establishes minimum standards for elevator safety. The Bureau of Elevator Safety (bureau) of the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) is the agency charged with enforcing the provisions of ch. 399, F.S. The department has rulemaking authority

¹ See s. 399.001, F.S.

to enforce the provisions of ch. 399, F.S.² The Elevator Safety and Technical Advisory Council (advisory council) within the department provides technical assistance to the division.³ It makes recommendations regarding the rules for the operation, maintenance, servicing, construction, alteration, installation, and inspection of vertical conveyances.⁴

The term “elevator” includes a wide variety of mechanical devices, including escalators, dumbwaiters, moving walks, inclined stairway lifts, and inclined or vertical wheelchair lifts.⁵ As of August 1, 2012 there were 51,552 licensed elevators in the state.⁶

Section 399.02(1), F.S., requires the elevator safety code to be the same as or similar to the code established by the American Society of Mechanical Engineers (ASME).⁷ The codes established by ASME provide the minimum model standards for the installation, operation, and maintenance of elevators. The codes established by ASME are meant to be adopted by the state and local agencies with jurisdiction over elevator safety. Standard ASME A17 and Standard ASME A18 serve as the basis for the Florida Elevator Safety Act and Florida’s elevator safety code.⁸

The elevator safety code establishes minimum requirements that provide a reasonable degree of safety for the general public and the safe operation of conveyances. For example:

- ASME A17.1 (2004), provides requirements related to the installation, alteration, maintenance, repair, inspections, and testing to ensure the minimum safety requirements for *new and existing elevators*.
- ASME A17.2 (2004), provides a guide for the inspection of elevators, escalators, and moving walks.
- ASME A17.3 (1996) is a code for existing elevators to ensure rider safety. The code provision specifically states that it is intended to guide *retroactive requirements for existing elevators*.
- The ASME/ANSI A18.1 “Safety Standard for Platform Lifts and Stairway Chairlifts” provides minimum guidelines for the design, manufacture, and installation of platform lifts and stairway chairlifts.⁹

² See s. 399.10, F.S.

³ See s. 399.1061, F.S. The Elevator Safety and Technical Advisory Council consists of eight members appointed by the secretary of the department who meet the following criteria: one representative from a major elevator manufacturing company or its authorized representative; one representative from an elevator servicing company; one representative from a building design profession; one representative of the general public; one representative of a local government in this state; one representative of a building owner or manager; one representative of labor involved in the installation, maintenance, and repair of elevators; and one representative who is a certified elevator inspector from a private inspection service.

⁴ The term “vertical conveyance” is not defined in ch. 399, F.S.

⁵ See s. 399.01(6), F.S.

⁶ See *Annual Report, Fiscal Year 2011-2012*, Division of Hotels and Restaurants, Department of Business and Professional Regulation, p. 24. A copy is available at:

http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2011_12.pdf

(Last visited Feb. 14, 2013).

⁷ The ASME standards specified in s. 399.02(1), F.S., are ASME A17.1, A17.3, and A18.1.

⁸ Section 399.02(1), F.S.

⁹ The Bureau of Elevator Safety in the Department of Business and Professional Regulation has adopted and incorporated by reference ASME A17.1, ASME A17.3, and ASME 18.1 in rule 61C-5.001, F.A.C.

The Elevator Safety Code requires any alteration, relocation or reclassification of an existing elevator to be in compliance with the edition of the Florida Building Code which is in effect at the time of receipt of the construction permit application to alter, relocate, or change classification.¹⁰ Specifically, ASME A17.3 requires owners of existing elevators to retrofit elevators to comply with revisions or updates to the code.¹¹

For existing elevators in condominiums or multi-family dwellings, including those that are a part of a licensed continuing care facility licensed under ch. 651, F.S., or a retirement community with apartments, s. 399.02(9), F.S., prohibits the enforcement of the Phase II Firefighters' Service requirements, as amended into ASME A17.1 and A17.3. The Phase II Firefighter's Service requirements permit the operation and exclusive control of an elevator by firefighters for evacuating the physically disabled in occupied buildings and for moving firefighters and equipment during an emergency.¹² The Phase II Firefighters' Service requirements cannot be enforced until July 1, 2015, or until the elevator is replaced or requires major modification before July 1, 2015. Section 399.02(9), F.S., does not restrict the elevator owner's ability to apply for a variance from the Phase II Firefighters' Service or the division's ability to issue variances. Section 399.02(9), F.S., requires the division to adopt rules to administer the exemption.

According to the department, the Division of Hotels and Restaurants is in the rulemaking process to define the term "major modification."

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."¹³ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.¹⁴ 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.¹⁵

A declaration "may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property."¹⁶ A declaration of condominium may be amended as provided in the declaration.¹⁷ If the declaration does not

¹⁰ See ASME A17.3.

¹¹ See *City of Miami Beach v. Dept. Business and Professional Regulation*, Case No. 03-5188RU, Final Order (Fla. DOAH 2009).

¹² Rule 3.11.3, A.S.M.E. A17.3 (1996 edition). On October 1, 2005, ASME A17.3 (1996) was first adopted in the 2004 Florida Building Code as the code for the inspection and maintenance of existing elevators. On April 2, 2008, the Bureau of Elevator Safety in the Department of Business and Professional Regulation adopted the ASME elevator standards that were incorporated by reference in ch. 30, Florida Building Code. See Florida Building Code (2010), ch. 30, Elevators and Conveying Systems at http://www2.iccsafe.org/states/florida_codes/ (last visited Feb. 13, 2012)..

¹³ Section 718.103(11), F.S.

¹⁴ Section 718.104(2), F.S.

¹⁵ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

¹⁶ Section 718.104(5), F.S.

¹⁷ See s. 718.110(1)(a), F.S.

provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.¹⁸ Condominiums are administered by a board of directors referred to as a “board of administration.”¹⁹

Section 718.103(8), F.S., defines the term “common elements” to mean the portions of the condominium property not included in the units.

Section 718.103(12), F.S., defines the term “condominium parcel” to mean a unit, together with the undivided share in the common elements appurtenant to the unit.

Section 718.130(19), F.S., defines the term “limited common elements” to mean those common elements which are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.

Cooperative Associations

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

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, a cooperative 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.²⁰

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums and cooperatives are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department) in accordance with ch. 718, F.S., and ch. 719, F.S.

The division is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., and ch. 719, F.S., with respect to associations that are still under developer control.²¹ The division 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.²²

¹⁸ Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

¹⁹ Section 718.103(4), F.S.

²⁰ *See* ss. 719.106(1)(g) and 719.107, F.S.

²¹ Section 718.501(1), F.S., and s. 719.501(1), F.S., respectively.

²² Section 718.501(1), F.S. *See* Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 12 ed. (2010-2011) s. 14.2.

As part of the division's authority to investigate complaints, s. 718.501(1), F.S., for condominium and s. 719.501(1)(c), F.S., for cooperatives, authorize the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

Chapters 718, 719, and 720, F.S.

Although condominiums and cooperatives are regulated by the division, homeowners' associations are not regulated. Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide for requirements for the governance of these associations. For example, they delineate requirements for notices of meetings²³ and recordkeeping requirements, including which records are accessible to the members of the association.²⁴ Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act." Section 718.110(11), F.S., determines when the joinder of mortgagees is necessary if the declaration of condominiums is amended.

Post-Election Certification of Condominium Board Members

Requirements for association bylaws are outlined in s. 718.112, F.S.

Section 718.112(2)(d)3.b., F.S.,²⁵ outlines a post-election certification requirement for newly elected board members. Within 90 days after 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 current written policies;
- 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 within one year before the election or 90 days after the election or appointment.²⁶ The curriculum must be administered by a condominium education provider approved by the division.²⁷ A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum.²⁸ If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension.

²³ See s. 718.112(2), F.S., for condominiums, s. 719.106, F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners' associations.

²⁴ See s. 718.111(12), F.S., for condominiums, s. 719.104(2), F.S., for cooperatives, and s. 720.303(4), F.S., for homeowners' associations.

²⁵ Section 718.112(2)(d)3.b., F.S.

²⁶ *Id.* The department's Internet site provides a listing of approved educational providers. See Division of Florida Condominiums, Timeshares, and Mobile Homes, *Approved Education Providers*, available at <http://www.myfloridalicense.com/dbpr/lsc/condominiums/ApprovedEducationProviders.html> (Last visited Feb. 14, 2013).

²⁷ Section 718.112(2)(d)3.b., F.S.

²⁸ *Id.*

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.²⁹ The validity of any action by the condominium board is not affected by the association's failure to have the certification on file.³⁰

Condominium, Cooperative, and Homeowners' Associations-Voting Interests

For condominium associations, s. 718.103(30), F.S., defines the term "voting interests" to mean:

the voting rights distributed to the association members pursuant to s. 718.104(4)(j). In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium.

For cooperative associations, s. 719.103(28), F.S., defines the term "voting interests" to mean, "the voting rights distributed to the association members as provided for in the articles of incorporation." For homeowners' associations, the term "voting interests" is defined in s. 720.301(13), F.S., as "the voting rights distributed to the members of the homeowners' association, pursuant to the governing documents."

Condominium, Cooperative, and Homeowners' Associations-Recall of Board Members

Section 718.112(2)(j), F.S., outlines the procedure for the recall of board members. Any member of the board may be recalled and removed from office, with or without cause, by a majority of all of the voting interests. If a recall is approved by a majority of all voting interests at a meeting or by an agreement in writing, the board must notice and hold a board meeting within 5 business days in order to either certify the recall or not. If the board fails to duly notice and hold a board meeting within 5 business days, the recall will be deemed effective. Recall disputes are subject to arbitration by the division under s. 718.1255, F.S., which relates to the arbitration and mediation of disputes between condominium associations and members.

A recall petition may be filed at any time, even when another election is scheduled.

Comparable provisions for the recall of the board members of cooperative associations are provided in s. 719.106(1)(f), F.S., and board members of homeowners' associations in s. 720.303(10), F.S.

Condominiums-Hurricane Protection

Section 718.113(5), F.S., specifies the condominiums' powers and duties in regards to the installation and maintenance of hurricane protection. A condominium association must adopt hurricane shutter specifications for each building within each condominium operated by the association. The board may, subject to approval by a majority of the voting interests, install hurricane shutters, impact glass, code-compliant windows, or other types of hurricane protection

²⁹ *Id.*

³⁰ *Id.*

that comply with or exceed the applicable building code.³¹ The association is responsible for the maintenance, repair, and replacement of hurricane protection for the property if the association is responsible for the maintenance of such property under the declaration of condominium.³² The association may operate the hurricane shutters without the permission of the unit owners only if such operation is necessary to protect the association and condominium property.

Section 718.115(1)(e), F.S., provides that the installation, replacement, operation, repair, and maintenance of hurricane shutters and other hurricane protections are a common expense, unless otherwise specified in the declaration of condominium. Unit owners who previously installed their own hurricane protection are entitled to a credit equal to the pro rata portion of the assessed installation cost assigned to each unit and for the pro rate share of expenses for hurricane protection installed on common elements and association property.

Condominium – Sanctioning Unit Owners

Section 718.303(3), F.S., provides for the assessment of fines for failure to comply with any provision of the declaration, the association's bylaws, or reasonable rules of the association by a unit owner, or a unit owner's tenant, guest, or invitee. A fine may not exceed \$100 per violation, but may be levied on each day of a continuing violation. A fine does not become a lien on the property. Before a fine may be imposed, notice and an opportunity for a hearing must be provided.³³ A fine against a unit owner may not in the aggregate exceed \$1,000.³⁴

Section 718.303(3)(a), F.S., provides that the association may suspend, for a reasonable period of time, the use rights of a unit owner, or a unit owner's tenant, guest, or invitee for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. Section 718.303(3)(a), F.S., does not specify whether the association can suspend the right to use limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators.

Section 718.303(5), F.S., authorizes condominium associations to suspend a unit owner's use rights if the unit owner is delinquent for more than 90 days in the payment of a monetary obligation to the association. A suspension ends upon full payment of all obligation currently due or overdue to the association. The voting interest or consent right of a suspended unit owner may not be counted toward the total number of voting interests for any purpose, including, but are not limited to, the number of voting interests necessary to constitute a quorum, conduct an election, or approve an action.³⁵ Section 718.303, F.S., also provides that the notice and hearing requirement for fines in s. 718.303(3), F.S., do not apply to suspensions under this subsection.³⁶

The suspension provisions in s. 718.303, F.S., are substantially similar to the suspension provisions in the bill for cooperatives in s. 719.303, F.S., and for homeowners' associations in s. 720.305, F.S.

³¹ Section 718.113(5)(a), F.S.

³² Section 718.113(5)(b), F.S.

³³ Section 718.303(3)(b), F.S.

³⁴ Section 718.303(3), F.S.

³⁵ Section 718.303(5), F.S.

³⁶ *Id.*

Phase Condominiums

Section 718.403, F.S., permits developers to develop condominiums in phases if the anticipated phases are described in detail in the original declaration of condominium or an amendment to the declaration which has been approved by all the unit owners and unit mortgagees. The time for completion of all the phases may not exceed 7 years from the date of the recording of the declaration of condominium.³⁷

Condominium Ombudsman

Section 718.5011, F.S., provides for the appointment of a condominium ombudsman by the Governor. The ombudsman acts as a liaison between the division, unit owners, boards of directors, board members, community association managers, and other affected parties.³⁸ The ombudsman develops policies and procedures to assist parties in the understanding of their rights and responsibilities set forth in ch. 718, F.S., and the condominium documents governing their respective association.³⁹ The ombudsman also monitors and reviews procedures and disputes concerning condominium elections or meetings, and may recommend to the division whether to pursue enforcement action where there is reasonable cause to believe that election misconduct has occurred.⁴⁰ The ombudsman may also make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers.⁴¹ The ombudsman may also assist in the resolution of disputes.⁴²

Section 718.5011(2), F.S., prohibits any officer or full-time employee of the ombudsman's office from actively engaging in any other business or profession.

Cooperatives – Sanctioning Unit Owners

Section 719.303(3), F.S., permits cooperative associations to levy reasonable fines against unit owners for failure to comply with the cooperative documents or rules of the association. Fines may not exceed \$100 per violation and may not become a lien against the unit. The fine may be levied on the basis of each day of a continuing violation. A fine may not exceed \$1,000 in the aggregate.

Homeowners' Associations

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners' associations, and protects the rights of association members without unduly impairing the ability of such associations to perform their functions.⁴³

A "homeowners' association" is defined 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

³⁷ Section 718.403(1), F.S.

³⁸ Section 718.5012(4), F.S.

³⁹ *Id.*

⁴⁰ Section 718.5012(5), F.S.

⁴¹ Section 718.5012(6), F.S.

⁴² Section 718.5012(9), F.S.

⁴³ *See* s. 720.302(1), F.S.

condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.”⁴⁴ Unless specifically stated to the contrary, homeowners’ associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.⁴⁵

Homeowners’ associations are administered by a board of directors whose members are elected.⁴⁶ 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.⁴⁷ The officers and members of a homeowners’ association have a fiduciary relationship to the members who are served by the association.⁴⁸

III. Effect of Proposed Changes:

Elevators

The bill amends s. 399.02(9), F.S., to extend the enforcement exemption by deleting the July 1, 2015, end date for the Phase II Firefighters’ Service exemption. The bill maintains the requirement that elevators must comply with Phase II Firefighters’ Service when they are replaced or the elevator requires major modification.

Condominium –Meetings of Unit Owners

The bill amends s. 718.112(2)(d)2., F.S., to include the articles of incorporation, in addition to the condominium association’s bylaws, as the governing document which may provide for two-year terms for association board members. It also deletes the additional requirement that the majority of the voting interests would also have to approve the staggered terms by a majority of the total voting interests.

The bill amends s. 718.112(2)(d)3., F.S., to clarify that a meeting notice that is broadcast on a closed-circuit television system may be made in lieu of a notice posted physically on the condominium property. A meeting notice that is broadcasted and not physically posted must be broadcasted at least four times every hour of each day that the notice is required.

Condominiums-Elections

The bill amends s. 718.112(2)(d)4., F.S., to exempt associations that govern timeshare condominiums from the prohibition against the use of proxies to elect members of the board.

The bill amends s. 718.112(2)(d)4.b., F.S., relating to the post-election certification of condominium board members, to clarify that the board must maintain a copy of the written certification for inspection by members for 5 years or the duration of the board member’s tenure, whichever is longer. The bill provides a comparable requirement for cooperative associations in s. 719.106(1)(d)1.b., F.S., and homeowners’ associations in s. 720.306(9)(d), F.S.

⁴⁴ Section 720.301(9), F.S.

⁴⁵ Section 720.302(5), F.S.

⁴⁶ See ss. 720.303 and 720.307, F.S.

⁴⁷ See ss. 720.301 and 720.303, F.S.

⁴⁸ Section 720.303(1), F.S.

The bill creates s. 718.112(2)(d)4.c., F.S., to require that any challenge to the election process be commenced within 60 days after the election results are announced. The bill provides a comparable amendment to s. 719.106(1)(d)1.b., F.S. relating to challenges to the election's process for cooperative associations.

The bill creates s. 718.112(2)(j)5., F.S., which relates to the recall of board members, to provide that, if the board fails to notice and hold the required meeting to certify the recall or fails to file the required recall petition, the unit owner representative⁴⁹ may file a petition pursuant to s. 718.1255, F.S., challenging the board's failure to act. The bill requires that the petition be filed within 60 days after the expiration of the applicable 5-full-business-day period.⁵⁰ The division's review of a petition would be limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

The bill creates s. 718.112(2)(j)7. and 8., F.S., to revise the procedure for recall elections. Section 718.112(2)(j)7., F.S., provides that a board member who has been recalled may file a petition pursuant to s. 718.1255, F.S., to challenge the validity of a recall. The petition must be filed within 60 days after the recall is deemed certified⁵¹ and the association and the unit owner representative must be named as the respondents.

Section 718.112(2)(j)8., F.S., provides that the division may not accept a recall petition for filing when there are 60 or fewer days until the next scheduled reelection of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

The amendment to s. 718.112(2)(j), F.S., is comparable to bill's board member recall limitations provided in s. 719.106(1)(f), F.S., for cooperatives and in s. 720.303(10)(g), F.S., for homeowners' associations.

Condominiums - Hurricane Protection

The bill amends s. 718.113(5), F.S., to include impact glass, code-compliant windows and doors, and other types of code-compliant hurricane protection in reference to hurricane protection.

The bill amends s. 718.115(1)(e), F.S., relating to the common expenses for hurricane protection, to include impact glass, code-compliant windows and doors, and other types of code-compliant hurricane protection.

The bill also amends s. 718.115(1)(e), F.S., to clarify that a unit owner will receive credit when the shutters are installed. It provides that unit owners, who previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code, are entitled to receive a credit when that hurricane protection is installed. It provides that unit owners who have installed other types of code-compliant hurricane protection that comply with the

⁴⁹ Rule 61B-23.0027(3)(b)1., F.A.C., requires that a unit owner representative must be elected or appointed by the presiding officer at a recall meeting of the board "to receive pleadings (e.g., copies of a petition for recall arbitration; motions), notices, or other papers on behalf of the recalling unit owners in the event the board disputes the recall."

⁵⁰ The board has 5 business days to certify the recall or file a petition challenging the recall. If the board fails to act within the 5 days, the recall is deemed effective.

⁵¹ *Id.*

current applicable building code are entitled to receive a credit when the same type of other code-compliant hurricane protection is installed.

The bill deletes the reference to laminated glass architecturally designed to function as hurricane protection.

Condominiums-Sanctioning Owners and Occupants

The bill amends s. 718.303(3), F.S., to provide that unit owner suspension of rights does not apply to limited common elements that are intended to be used only by that unit, common elements needed to access the unit, utility services to the unit, parking spaces, or elevators. The bill amends s. 718.303(5), F.S., to allow a unit's or member's voting rights that have been suspended due to nonpayment of monetary obligations, to be included in the number of voting interests needed to establish a quorum, conduct an election, or to obtain member approval is reduced by the number of suspended voting or consent rights.

The bill provides similar provisions for the suspension of rights in ss. 719.303(3) and (5), F.S., for cooperative associations and s. 720.305(2)(a) and (5) for homeowners' associations.

Phase Condominiums

The bill amends s. 718.403(1), F.S., to permit condominiums to extend the 7-year period for completion of all phases of a phase condominium. The extension must be by an amendment to the declaration approved by the unit owners. An amendment to extend the 7-year period may be submitted for approval only during the last 3 years of the initial 7-year period. The amendment must describe the time period in which all phases will be completed, but such period may not exceed 10 years from the date of the recording of the original declaration of condominium submitting the initial phase to condominium ownership. An amendment to extend the 7-year period is not subject to the limitations in s. 718.110(4), F.S.⁵²

Secondary Condominiums

The bill creates s. 718.406, F.S., to provide for the creation of condominiums within a condominium parcel. This provision addresses the relationship between the primary condominium and the secondary condominium units. According to The Florida Bar Real Property, Probate, and Trust Law Section, an example of a primary and secondary condominium is a high-rise building that is divided into two units. The first few floors would compose one unit in the primary condominium and would be dedicated to commercial space. The upper floors of the building would constitute another unit in the primary condominium and would be dedicated to residential space. A secondary condominium would be created within each of the primary condominium units, e.g., a secondary condominium association consisting of commercial units in the lower floors and residential units in the upper floors. Also according to The Florida Bar,

⁵² In pertinent part, s. 718.110(4), F.S., prohibits amendments that materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which unit owners share the common expenses, own the common surplus, and which provides that the acquisition of property by the association and material alterations or substantial additions to such property or the common elements do not constitute a material alteration or modification of the appurtenances to the units. In current law, s. 718.110(4), F.S., also provides that a declaration recorded after April 1, 1992, may not require the approval of less than a majority of total voting interests of the condominium for amendments under this subsection, unless otherwise required by a governmental entity.

the bill would provide a framework, including common terminology, for this type of condominium association.

Section 718.406(2), F.S., provides that the secondary condominium association is responsible for operating the secondary association. It also provides that the secondary association must designate who would cast the vote of the subdivided parcel in the primary association. If the secondary association does not designate a person, the president of the secondary association or his or her designee is authorized to cast that vote.

Section 718.406(3), F.S., provides that, unless the declaration of the primary condominium provides for the creation of secondary condominium on a condominium parcel, a secondary condominium may not be created unless the record owners of a majority of the condominium parcels execute an amendment to the primary declaration.

Section 718.406(4), F.S., provides that, where the consent of the primary condominium association is required to create a secondary condominium, only the approval of a majority of the board of directors of the primary condominium association shall be required unless the primary condominium declaration provides otherwise. It provides that only the lienholders of the subdivided parcel upon which the secondary condominium will be created, the owner of that parcel, and the board of the primary condominium shall have the right to approve the creation of the secondary condominium and the contents of the secondary condominium declaration. It also provides that the recording of the secondary condominium declaration is only effective if it evidences the approval of the lienholders of the subdivided parcel, the owner of that parcel, and the board of the primary condominium.

Section 718.406(5), F.S., provides that a unit owner in a secondary condominium is governed by both the declaration of condominium for the primary condominium and the declaration of the second condominium.

Section 718.406(6), F.S., provides that the primary condominium may be responsible for the insurance of both the primary and secondary condominium if the primary condominium declaration permits. Section 718.406(7), F.S., provides that the board of directors of the primary condominium association may adopt hurricane shutter specifications for both the primary and secondary condominium.

Section 718.406(8), F.S., provides that an owner or mortgagee of a unit in a secondary condominium must register with the primary condominium to receive notice of a foreclosure action against the secondary condominium. If registered, the primary condominium association must give at least 30 days notice to the secondary condominium owner or mortgagee before instituting a foreclosure action against a subdivided parcel for nonpayment of amounts due the association. The bill provides for the payment by the registered owner of the unit of their proportional share of the amount of delinquent assessments attributable to the unit. Upon payment of delinquent assessments, the primary association must promptly modify or release the record of lien on the primary condominium so that the lien no longer encumbers the secondary condominium unit. Alternatively, the registered owner may pay all delinquent assessments and seek reimbursement of the amounts paid from the secondary association. The foreclosure is not effective without written notice.

Section 718.406(9), F.S., provides that the primary declaration controls any conflict between the primary and secondary condominium declarations. Section 718.406(10), F.S., provides that common expenses due to the primary condominium from the secondary condominium are a common expense of the secondary condominium.

Condominium Ombudsman

The bill amends s. 718.5011(2), F.S., to permit officers or full-time employees of the ombudsman's office to engage in another profession or any other business that is not directly or indirectly related to, or does not conflict with, his or her work in the ombudsman's office.

Cooperative-Official Records

The bill amends s. 719.104(2)(c), F.S., relating to the official records of the cooperative association to add the following information to the list of items that are not accessible to members of the association:

- Records protected by the lawyer-client privilege as provided in s. 90.502, F.S. and work product privilege.
- Personnel records of association employees, such as disciplinary, payroll, health, and insurance records. However, the unit owners would have access to written employment agreements with an association employee or budgetary or financial records that indicate the compensation paid to an association employee.
- Social security numbers, driver license numbers, credit card numbers, email addresses, telephone numbers, emergency contact information, and any addresses of a unit owner which are not provided to fulfill the association's notice requirements, and other identifying personal information except for the person's name, unit designation, mailing address, and property address.
- Electronic security measures used to safeguard data, including passwords.
- Software and operating systems used by the association which allow manipulation of data.

Amendment of Cooperative Documents

The bill creates s. 719.1055(7), F.S., to provide the legislative findings that the procurement of consent or joinder to amendments that do not materially affect the rights or interests of mortgagees is unreasonable and a substantial burden on cooperative unit owners and associations. The bill provides that there is a compelling state interest in enabling cooperative association members to approve amendments. This provision will facilitate attempts by cooperative shareholders to amend their documents without the approval of all mortgagees when a change to the association documents does not adversely affect the mortgagee's rights or interests.

The bill limits the enforceability of any mortgage or any provision in declarations, articles of incorporation, or bylaws of a condominium association recorded on or after July 1, 2013, or amendments thereto, that require the consent or joinder of some or all mortgagees of units or any other portion of the cooperative property for those mortgages. Any such provisions or amendments recorded prior to July 1, 2013, will remain enforceable. As to provisions or amendments created after July 1, 2013, the bill provides that provisions requiring consent or joinder are enforceable only as to provisions that adversely affect the priority of the mortgagee's

lien or the mortgagee's right to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

The bill provides a process for obtaining addresses of mortgagees and contacting them to obtain their consent or joinder. The association may rely upon the public records to identify the holders of mortgages or outstanding mortgages. It may also rely on the address in the original recorded mortgage document unless there is a different address in the in a recorded assignment or modification of the mortgage.

Failure of any mortgagee to respond to a request for the consent or joinder to a proposed amendment within 60 days after the date that a request is sent to the mortgagee is deemed to have consented to the amendment.

For any amendments that require mortgage consent after July 1, 2013, the consent must be evidenced by an affidavit of the association recorded in the public records of the county in which the declaration is recorded.

An amendment may be voidable by any mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment is subject to a 5 year statute of limitations from the date of discovery or the date of recordation. This provision applies to all mortgages, regardless of the date of recordation of the mortgage.

There is a comparable provision for the amendment of condominium documents in s. 718.110(11), F.S. The bill provides a similar provision for homeowners' associations in s. 720.306(1)(d), F.S.

Cooperatives-Meetings

The bill amends s. 719.106(1)(c), F.S., to provide that the requirement of open meetings of the board or committee does not apply to meetings held for the purpose of discussing personnel matters.

Cooperatives-Elections Process Challenges

The bill amends s. 719.106(1)(d)1.b., F.S., to require that any challenge to the election process must be commenced within 60 days after the election results are announced.

This provision is similar to the bill's amendment to s. 718.112(2)(d)4.c., F.S., relating to challenges to the election's process for condominium associations and s. 720.306(9)(a), F.S., for homeowners' associations.

Cooperatives-Recall Elections

The bill creates s. 719.106(1)(f)5., F.S., which relates to the recall of board members, to provide that, if the board fails to notice and hold the required meeting to certify the recall or fails to file the required recall petition, the unit owner representative may file a petition pursuant to s. 719.1255, F.S., challenging the board's failure to act. The bill requires that the petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The division's review of a petition would be limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

The bill creates s. 719.106(1)(f)7. and 8., F.S., to revise the procedure for recall disputes. Section 719.106(1)(f)7., F.S., is amended to provide that a board member who has been recalled may file a petition pursuant to s. 719.1255, F.S., to challenge the validity of a recall. The petition must be filed within 60 days after the recall is deemed certified and the association and the unit owner representative must be named as the respondents.

Section 719.106(1)(f)8., F.S., provides that the division may not accept a recall petition for filing when there are 60 or fewer days until the next scheduled reelection of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

These provisions are similar to the bill's board member recall limitations provided in s. 718.112(2)(j), F.S., for condominiums, and in s. 720.303(10)(g), F.S., for homeowners' associations.

Cooperative-Sanctioning Owners and Occupants

The bill amends s. 719.303(3), F.S., to provide that unit owner suspension of rights does not apply to limited common elements that are intended to be used only by that unit, common elements needed to access the unit, utility services to the unit, parking spaces, or elevators. The bill amends s. 719.303(5), F.S., which relates to the suspension of a unit's or member's voting rights due to nonpayment of monetary obligations, to delete the provision that the number needed to establish a quorum, conduct an election, or to obtain member approval is reduced by the number of suspended voting or consent rights.

The bill provides similar provisions for the suspension of rights in ss. 718.303(3) and (5), F.S., for condominium associations and ss. 720.305(2)(a) and (5), F.S., for homeowners' associations.

Homeowners' Associations-Official Records

The bill amends s. 720.303(5)(c)3., F.S., to include the personnel records of the management company among the records that are not accessible to the association's members. Current law only references the personnel records of the association.

Homeowners' Associations-Recall Elections

The bill creates s. 720.303(10)(g), F.S., to provide that, if the board fails to notice and hold the required meeting to certify the recall of board members or fails to file the required recall petition, the unit owner representative may file a petition pursuant to s. 718.1255, F.S., to challenge the board's failure to act. The bill requires that the petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The division's review of a petition would be limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

The bill creates ss. 720.303(10)(k) and (l), F.S., to revise the procedure for recall disputes. Section 720.303(10)(k), F.S., is amended to provide that a board member who has been recalled may file a petition pursuant to ss. 718.112(2)(j) and 718.1255, F.S., to challenge the validity of a recall. The petition must be filed within 60 days after the recall is deemed certified and the association and the unit owner representative must be named as the respondents.

Section 720.303(10)(1), F.S., provides that the division may not accept for filing a recall petition when there are 60 or fewer days until the next scheduled reelection of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

These provision are similar to the bill's board member recall limitations provided in s. 718.112(2)(j), F.S., for condominiums, and in s. 719.106(1)(f), F.S., for cooperative associations.

Homeowners' Associations-Sanctioning Owners and Occupants

The bill amends s. 720.305(2)(a), F.S., to provide that unit owner suspension of rights does not apply to common areas used to provide access or utility services to the parcel. The bill amends s. 720.305(4), F.S., which relates to the suspension of a unit's or member's voting rights due to nonpayment of monetary obligations, to delete the provision that the number needed to establish a quorum, conduct an election, or to obtain member approval is reduced by the number of suspended voting or consent rights. The bill provides similar provisions for the suspension of rights in ss. 718.303(3) and (5), F.S., for condominium associations and ss. 719.303(3) and (5), F.S., for cooperative associations.

Amendment of Homeowner Association Documents

The bill creates s. 720.306(1)(d), F.S., to provide the legislative findings that the procurement of consent or joinder to amendments that do not materially affect the rights or interests of mortgagees is unreasonable and a substantial burden on homeowners' and associations. The bill provides that there is a compelling state interest in enabling homeowners' association members to approve amendments. This provision would facilitate attempts by homeowners to amend their documents without the approval of all mortgagees when a change to the association documents does not adversely affect the mortgagee's rights or interests.

The bill limits the enforceability of any mortgage or any provision or amendment to declarations, articles of incorporation, or bylaws of a homeowners' association recorded on or after July 1, 2013, or amendments thereto, that require the consent or joinder of some or all mortgagees of units or any other portion of the association property for those mortgages. Any such provisions or amendments recorded prior to July 2013, would remain enforceable. As to provisions or amendments created after July 1, 2013, the bill provides that provisions requiring consent or joinder are enforceable only as to provisions that adversely affect the priority of the mortgagee's lien or the mortgagee's right to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

The bill provides a process for obtaining addresses of mortgagees and contacting them to obtain their consent or joinder. The association may rely upon the public records to identify the holders or outstanding mortgages. It may also rely on the address in the original recorded mortgage document unless there is a different address in a recorded assignment or modification of the mortgage.

Failure of any mortgagee to respond to a request for the consent or joinder to a proposed amendment within 60 days after the date that a request is sent to the mortgagee is deemed to have consented to the amendment.

For any amendments that require mortgage consent after July 1, 2013, the consent must be evidenced by an affidavit of the association recorded in the public records of the county in which the declaration is recorded.

An amendment may be voidable by any mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment is subject to a 5 year statute of limitations from the date of discovery or the date of recordation. This provision applies to all mortgages, regardless of the date of recordation of the mortgage.

There are comparable provisions for the amendment of condominium documents in s. 718.110(11), F.S. The bill provides a similar provision for cooperative associations in s. 720.306(1)(d), F.S.

Homeowners' Associations-Right to Speak

The bill amends s. 720.306(6), F.S., relating to the right of homeowners' association members and parcel owners to attend and speak at meetings, to delete the condition that the parcel owner must submit a written request to speak prior to the meeting.

Homeowners' Associations-Elections Process Challenges

The bill amends s. 720.306(9)(a), F.S., to require that any challenge to the election process must be commenced within 60 days after the election results are announced.

This provision is similar to the bill's amendment to s. 718.112(2)(d)4.c., F.S., relating to challenges to the election's process for condominium associations and s. 719.106(1)(d)1.b., F.S., for cooperative associations.

Effective Date

The bill provides an effective date of July 1, 2013.

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.

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.