

## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 20, 1998 Revised: \_\_\_\_\_

Subject: Condominiums

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Rodriguez	Guthrie	RI	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

### I. Summary:

The bill provides a procedure for amending the declarations or bylaws of condominiums recorded prior to January 1, 1977, to consolidate financial operations of two or more residential condominiums under a single association. The bill provides that a convicted felon is ineligible for board of administration membership unless his or her right to vote has been restored. The bill provides that the common expenses of a developer-controlled association, that are not covered by insurance proceeds after a natural disaster, be equally divided among the unit owners, including those units owned by the developer.

The bill provides rulemaking authority for the division in regulating certain aspects of cooperative associations. It provides for procedures and requirements related to cooperative committee meetings. It requires a signed agreement by the buyer of a cooperative waiving the buyer's right to void a sale within 15 days of the purchase.

The bill defines the terms "buyer" and "division" in the Condominium Act and the Cooperative Act, chapters 718 and 719, Florida Statutes.

This bill substantially amends or creates the following sections of the Florida Statutes: 718.103, 718.111, 718.112, 718.116, 719.103, 719.1035, 719.104, 719.106, 719.301, 719.403, 719.502, 719.503, 719.621 and 721.05.

### II. Present Situation:

The terms "buyer" and "purchaser" are used interchangeably in chapters 718 and 719, F.S. As defined in Black's Law dictionary, a "buyer" is "one who buys; a purchaser, particularly of chattels." A "purchaser" is defined as "one who acquires real property in any other mode than by

descent.” Neither term has any additional meaning with regard to the sale of condominiums or cooperatives.

The term “division” is used throughout chapters 718 and 719, Florida Statutes, but are not defined in either chapter.

Resort condominiums are licensed and regulated pursuant to Chapter 509, Florida Statutes, regarding lodging and food service establishments and are defined as units in a condominium, cooperative, or timeshare plan which are rented more than 3 times in a calendar year for periods of less than 1 calendar month or which are advertised as a place regularly rented for periods of less than 1 calendar month.

Subsection (6) of s. 718.111, F.S., permits an association to operate more than one residential condominium within a phase development as a single condominium if provision is made for such consolidated operation in the original declaration or bylaws. A condominium development started prior to October, 1974, however, is required to allocate common association expenses either on a square footage basis or on a unit basis and the financial records for each condominium must be separately maintained. If a development contains different types of units (e.g., garden units, elevator building units, townhouses, and etc.), each phase of the development must have its own allocated condominium assessments. Subsection (11) of s. 718.112, F.S., requires a condominium association to use its best efforts to obtain and maintain adequate insurance. Subsection (12) requires an association to make available the official records of the association to its members at all reasonable times and provides for the association to adopt reasonable rules in determining the manner of distribution and inspection of the records.

Section 718.112, F.S., provides that a person seeking to be a candidate for the board of administration of a condominium association must give written notice to the association not less than 40 days before a scheduled election.

Section 718.116, F.S., provides procedures for condominium association assessments and for the collection of those assessments, including liens or penalties that may be imposed. Section 718.116, F.S., also excuses developers from paying assessments for unsold units if the developer is operating under a guarantee to the purchaser. The “developer guarantee” must provide that the assessment for common expenses will not increase over a stated dollar amount during the guaranteed period and that any common expenses incurred that exceed the assessments collected during that period will be paid for by the developer. Presently, if an insurance loss occurs during the developer guarantee period, the developer may be responsible for all costs for common expenses in excess of the insurance proceeds.

The Department of Business and Professional Regulation has promulgated numerous rules relating to the Condominium Act that were identified by the department as lacking necessary rulemaking authority pursuant to the new Administrative Procedures Act standards. These are addressed in a “rule authorization bill” (see SB 1054). The department seeks similar authority to adopt rules regarding cooperative associations.

### III. Effect of Proposed Changes:

**Section 1** defines the term “buyer” as one who purchases a condominium and provides that the term “purchaser” can be used interchangeably. The term “division” is defined to mean the Division of Florida Land Sales, Condominiums and Mobile Homes.

**Section 2** amends subsection (6) of s. 718.111, F.S., to provide for consolidated financial operations (including budgets, assessments, accounting, recordkeeping, and similar matters) of multiple condominiums by a single association if the declaration was recorded prior to January 1, 1977, and the declarations or bylaws of such condominiums provide for such consolidated operation. If the declarations or bylaws of such condominiums do not already provide for consolidated financial operation, such provision can be made by amending the declaration or amending the bylaws with approval of two-thirds of the voting interests.

The bill amends subsection (11) of s. 718.111, F.S., to provide that during a period of developer control, the association must obtain and maintain adequate insurance and to provide that failure to maintain such insurance will constitute a breach of fiduciary duty by the developer-appointed members of a board of directors, unless those members can show that they exercised due diligence.

The bill amends subsection (12) of s. 718.111, F.S., to require an association with more than 50 units to deliver copies of the official records upon written request and to recover its actual costs of copying and delivering the documents (current law requires that documents be available for copying, but does not require delivery). The bill also provides that a postmark establishes the date of delivery.

**Section 3** amends s. 718.112, F.S., to provide that a board member of a condominium association, including any designated by a corporation, must meet the requirements set forth in an association’s declaration. Also, a person convicted of a felony whose right to vote has not been restored in the jurisdiction of his or her residence is not eligible for board membership.

**Section 4** amends s. 718.116, F.S., to allow a developer in a developer-controlled association to assess common expenses against unit owners if the common expenses are incurred during a “developer guarantee” period and are a result of a natural disaster or an “Act of God” for which the expenses are not covered by the insurance proceeds. The developer must have maintained the necessary insurance coverage required in subsection (11) of s. 718.111, F.S. The expenses are to be divided on a pro-rata basis among those owning units at the time of the event, including the developer.

**Section 5** defines the term “buyer” as one who purchases a cooperative and provides that the term “purchaser” can be used interchangeably. The term “division” is defined to mean the Division of Florida Land Sales, Condominiums and Mobile Homes. This section also reorganizes existing definitions in alphabetical order.

**Sections 6-13** amend chapter 719, F.S., to provide procedures for cooperative association meetings, record keeping requirements for developers, and authority for the department to adopt rules regarding the Cooperative Act that parallel similar rules already adopted for condominiums.

**Sections 6 and 7** amend ss. 719.1035, and 719.104 F.S., to provide that the board of directors of a cooperative association must notify the division prior to taking any action to dissolve or merge the cooperative association. It provides that upon creation of a cooperative, the developer or the association shall file the recording information with the division within 30 working days.

**Section 8** amends s. 719.106, F.S. It allows board members of a cooperative association to submit, in writing, their agreement or disagreement on any action taken at a meeting. However, the submission can not be used as a voted for or against the action taken and may not be used to create a quorum. It allows a board member to attend a board or committee meeting by telephone conference but requires that a telephone speaker be used so that the member can be heard by any unit owners present at the meeting. It requires that the association adopt written rules regulating the frequency, duration and manner of unit owner statements at association meetings.

**Section 9** amends s. 719.301, F.S., to authorize the division to adopt rules to administer the provisions of that section, without conferring overly broad rulemaking authority.

**Section 10** amends s. 719.403, F.S., to provide that a developer, upon recording the cooperative documents or amendments adding phases to a cooperative, shall file with the division such recording information on a specific form, within 30 days.

**Section 11** amends s. 719.502, F.S., to protect a prospective purchaser of a cooperative from a developer that has not received the approval for its documents from the division. It provides that a developer may not close on any contract for sale or on any contract for a lease of more than 5 years until the developer receives notification from the division that it is in compliance with the requirements of chapter 719, F.S. It also provides specific authority that the division may adopt rules regarding filing, review, and examination requirements and relevant timetables to ensure compliance with notice and disclosure requirements in s. 719.502, F.S.

**Section 12** amends s. 719.503, F.S., to provide that a developer may not close on a contract for a sale of a cooperative for 15 days after the execution of the contract and delivery of the documents to the buyer unless the buyer has been informed of the 15 day period to terminate and has signed a separate agreement acknowledging waiver of the 15 day period. The developer is required to keep proof of the buyer's signed agreement to close before the expiration period for 5 years after the closing date.

**Section 13** amends Part VI of the Cooperative Act to authorize the division to adopt rules to administer and ensure compliance of the developers' obligations with respect to cooperative conversions. The rulemaking authority is limited to those issues of cooperative conversions regarding the filing and noticing of intended conversions, rental agreement extensions, the period

of right of first refusal, and the issuance and disclosure of post purchase protections issued or established by the developer.

**Section 14** modifies a cross-reference to s. 718.103, F.S. in subsection (28) of s. 721.05, F.S., consistent with section 1 of the bill.

**Section 15** provides an effective date 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. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides a procedure for amending the declarations or bylaws of condominiums recorded prior to January 1, 1977, to consolidate financial operations of two or more residential condominiums under a single association.

C. Government Sector Impact:

The division may incur nominal costs in adopting rules.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides adequate and appropriate standards and guidelines to direct the agency's implementation of the proposed legislation.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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