

Bill No. CS for SB 2210

Amendment No. Barcode 160426

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Geller moved the following amendment:

Senate Amendment (with title amendment)

On page 79, between lines 26 and 27,

insert:

(5) DISPUTES INVOLVING ELECTION IRREGULARITIES.--Every arbitration petition received by the division and required to be filed under this section challenging the legality of the election of any director of the board of administration shall be handled on an expedited basis in the manner provided by division rules for recall arbitration disputes.

Section 70. Section 702.09, Florida Statutes, is amended to read:

702.09 Definitions.--For the purposes of ss. 702.07 and 702.08 the words "decree of foreclosure" shall include a judgment or order rendered or passed in the foreclosure proceedings in which the decree of foreclosure shall be rescinded, vacated, and set aside; the word "mortgage" shall mean any written instrument securing the payment of money or advances and shall include liens to secure payment of

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1 assessments arising under chapters 718, 719, and 720; the word
2 "debt" shall include promissory notes, bonds, and all other
3 written obligations given for the payment of money; the words
4 "foreclosure proceedings" shall embrace every action in the
5 circuit or county courts of this state wherein it is sought to
6 foreclose a mortgage and sell the property covered by the
7 same; and the word "property" shall mean and include both real
8 and personal property.

9 Section 71. Paragraph (h) of subsection (4) and
10 subsection (5) of section 718.104, Florida Statutes, are
11 amended to read:

12 718.104 Creation of condominiums; contents of
13 declaration.--Every condominium created in this state shall be
14 created pursuant to this chapter.

15 (4) The declaration must contain or provide for the
16 following matters:

17 (h) If a developer reserves the right, in a
18 declaration recorded on or after July 1, 2000, to create a
19 multicondominium, the declaration must state, or provide a
20 specific formula for determining, the fractional or percentage
21 shares of liability for the common expenses of the association
22 and of ownership of the common surplus of the association to
23 be allocated to the units in each condominium to be operated
24 by the association. If a ~~the~~ declaration recorded on or after
25 July 1, 2000, for a condominium operated by a multicondominium
26 association, as originally recorded, fails to so provide, the
27 share of liability for the common expenses of the association
28 and of ownership of the common surplus of the association
29 allocated to each unit in each condominium operated by the
30 association shall be a fraction of the whole, the numerator of
31 which is the number "one" and the denominator of which is the

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1 total number of units in all condominiums operated by the
2 association.

3 (5) The declaration as originally recorded, or as
4 amended pursuant to the procedures provided therein, may
5 include covenants and restrictions concerning the use,
6 occupancy, and transfer of the units permitted by law with
7 reference to real property. With the exception of amendments
8 that materially modify unit appurtenances as provided in s.
9 718.110(4), amendments may be applied to owners of units
10 existing as of the effective date of the amendment. This
11 section is intended to clarify existing law and applies to
12 associations existing on the effective date of this act.

13 However, the rule against perpetuities shall not defeat a
14 right given any person or entity by the declaration for the
15 purpose of allowing unit owners to retain reasonable control
16 over the use, occupancy, and transfer of units.

17 Section 72. Paragraph (b) of subsection (2) of section
18 718.106, Florida Statutes, is amended to read:

19 718.106 Condominium parcels; appurtenances; possession
20 and enjoyment.--

21 (2) There shall pass with a unit, as appurtenances
22 thereto:

23 (b) The exclusive right to use such portion of the
24 common elements as may be provided by the declaration,
25 including the right to transfer such right to other units or
26 unit owners to the extent authorized by the declaration as
27 originally recorded, or amendments to the declaration adopted
28 pursuant to the provisions contained therein under s.
29 718.110(2). Amendments to declarations of condominium
30 providing for the transfer of use rights with respect to
31 limited common elements are not amendments which materially

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1 modify unit appurtenances as described in s. 718.110(4).
2 However, in order to be effective, the transfer of use rights
3 with respect to limited common elements must be effectuated in
4 conformity with the procedures set forth in the declaration as
5 originally recorded or as amended. Further, such transfers
6 must be evidenced by a written instrument which must be
7 executed with the formalities of a deed and recorded in the
8 land records of the county in which the condominium is located
9 in order to be effective. Such instrument of transfer must
10 also specify the legal description of the unit which is
11 transferring use rights, as well as the legal description of
12 the unit obtaining the transfer of such rights. This section
13 is intended to clarify existing law and applies to
14 associations existing on the effective date of this act.

15 Section 73. Subsection (4) of section 718.110, Florida
16 Statutes, is amended to read:

17 718.110 Amendment of declaration; correction of error
18 or omission in declaration by circuit court.--

19 (4) Unless otherwise provided in the declaration as
20 originally recorded, no amendment may change the configuration
21 or size of any unit in any material fashion, materially alter
22 or modify the appurtenances to the unit, or change the
23 proportion or percentage by which the unit owner shares the
24 common expenses of the condominium and owns the common surplus
25 of the condominium unless the record owner of the unit and all
26 record owners of liens on the unit join in the execution of
27 the amendment and unless all the record owners of all other
28 units in the same condominium approve the amendment. The
29 acquisition of property by the association, and material
30 alterations or substantial additions to such property or the
31 common elements by the association in accordance with s.

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1 718.111(7) or s. 718.113, amendments providing for the
 2 transfer of use rights in limited common elements pursuant to
 3 s. 718.106(2)(b), and amendments restricting or modifying the
 4 right to lease condominium units shall not be deemed to
 5 constitute a material alteration or modification of the
 6 appurtenances to the units. With the exception of amendments
 7 that materially modify unit appurtenances as provided in this
 8 section, amendments may be applied to owners of units existing
 9 as of the effective date of the amendment. This section is
 10 intended to clarify existing law and applies to associations
 11 existing on the effective date of this act.A declaration
 12 recorded after April 1, 1992, may not require the approval of
 13 less than a majority of total voting interests of the
 14 condominium for amendments under this subsection, unless
 15 otherwise required by a governmental entity.

16 Section 74. Subsection (4), paragraph (a) of
 17 subsection (7), and subsection (13) of section 718.111,
 18 Florida Statutes, are amended to read:

19 718.111 The association.--

20 (4) ASSESSMENTS; MANAGEMENT OF COMMON ELEMENTS.--The
 21 association has the power to make and collect assessments and
 22 to lease, maintain, repair, and replace the common elements or
 23 association property; however, the association may not charge
 24 a use fee against a unit owner for the use of common elements
 25 or association property unless otherwise provided for in the
 26 declaration of condominium or by a majority vote of the
 27 association or unless the charges relate to ~~expenses incurred~~
 28 ~~by~~ an owner having exclusive use of the common elements or
 29 association property.

30 (7) TITLE TO PROPERTY.--

31 (a) The association has the power to acquire title to

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1 property or otherwise hold, convey, lease, and mortgage
2 association property for the use and benefit of its members.
3 The power to acquire personal property shall be exercised by
4 the board of administration. Except as otherwise permitted in
5 subsections (8) and (9) and in s. 718.114, no association may
6 acquire, convey, ~~lease~~, or mortgage association real property
7 except in the manner provided in the declaration, and if the
8 declaration does not specify the procedure, then approval of
9 75 percent of the total voting interests shall be required.

10 (13) FINANCIAL REPORTING.--Within 90 days after the
11 end of the fiscal year, or annually on a date provided in the
12 bylaws, the association shall prepare and complete, or
13 contract for the preparation and completion of ~~cause to be~~
14 ~~prepared and completed by a third party~~, a financial report
15 for the preceding fiscal year. Within 21 days after the final
16 financial report is completed by the association or received
17 ~~by the association~~ from the third party, but in no event later
18 than 120 days after the end of the fiscal year, or such other
19 date as is provided in the bylaws, the association shall mail
20 to each unit owner at the address last furnished to the
21 association by the unit owner, or hand deliver to each unit
22 owner, a copy of the financial report or a notice that a copy
23 of the financial report will be mailed or hand delivered to
24 the unit owner, without charge, upon receipt of a written
25 request from the unit owner. The division shall adopt rules
26 setting forth uniform accounting principles and standards to
27 be used by all associations and shall adopt rules addressing
28 financial reporting requirements for multicondominium
29 associations. In adopting such rules, the division shall
30 consider the number of members and annual revenues of an
31 association. Financial reports shall be prepared as follows:

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1 (a) An association that meets the criteria of this
2 paragraph shall prepare or cause to be prepared a complete set
3 of financial statements in accordance with generally accepted
4 accounting principles. The financial statements shall be
5 based upon the association's total annual revenues, as
6 follows:

7 1. An association with total annual revenues of
8 \$100,000 or more, but less than \$200,000, shall prepare
9 compiled financial statements.

10 2. An association with total annual revenues of at
11 least \$200,000, but less than \$400,000, shall prepare reviewed
12 financial statements.

13 3. An association with total annual revenues of
14 \$400,000 or more shall prepare audited financial statements.

15 (b)1. An association with total annual revenues of
16 less than \$100,000 shall prepare a report of cash receipts and
17 expenditures.

18 2. An association which operates less than 50 units,
19 regardless of the association's annual revenues, shall prepare
20 a report of cash receipts and expenditures in lieu of
21 financial statements required by paragraph (a).

22 3. A report of cash receipts and disbursements must
23 disclose the amount of receipts by accounts and receipt
24 classifications and the amount of expenses by accounts and
25 expense classifications, including, but not limited to, the
26 following, as applicable: costs for security, professional and
27 management fees and expenses, taxes, costs for recreation
28 facilities, expenses for refuse collection and utility
29 services, expenses for lawn care, costs for building
30 maintenance and repair, insurance costs, administration and
31 salary expenses, and reserves accumulated and expended for

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1 capital expenditures, deferred maintenance, and any other
2 category for which the association maintains reserves.

3 (c) An association may prepare or cause to be
4 prepared, without a meeting of or approval by the unit owners:

5 1. Compiled, reviewed, or audited financial
6 statements, if the association is required to prepare a report
7 of cash receipts and expenditures;

8 2. Reviewed or audited financial statements, if the
9 association is required to prepare compiled financial
10 statements; or

11 3. Audited financial statements if the association is
12 required to prepare reviewed financial statements.

13 (d) If approved by a majority of the voting interests
14 present at a properly called meeting of the association, an
15 association may prepare or cause to be prepared:

16 1. A report of cash receipts and expenditures in lieu
17 of a compiled, reviewed, or audited financial statement;

18 2. A report of cash receipts and expenditures or a
19 compiled financial statement in lieu of a reviewed or audited
20 financial statement; or

21 3. A report of cash receipts and expenditures, a
22 compiled financial statement, or a reviewed financial
23 statement in lieu of an audited financial statement.

24
25 Such meeting and approval must occur prior to the end of the
26 fiscal year and is effective only for the fiscal year in which
27 the vote is taken. With respect to an association to which the
28 developer has not turned over control of the association, all
29 unit owners, including the developer, may vote on issues
30 related to the preparation of financial reports for the first
31 2 fiscal years of the association's operation, beginning with

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1 the fiscal year in which the declaration is recorded.
2 Thereafter, all unit owners except the developer may vote on
3 such issues until control is turned over to the association by
4 the developer.

5 Section 75. Subsection (3) of section 718.112, Florida
6 Statutes, is amended to read:

7 718.112 Bylaws.--

8 (3) OPTIONAL PROVISIONS.--The bylaws as originally
9 recorded, or as amended pursuant to the procedure provided
10 therein, may provide for the following:

11 (a) A method of adopting and amending administrative
12 rules and regulations governing the details of the operation
13 and use of the common elements.

14 (b) Restrictions on and requirements for the use,
15 maintenance, and appearance of the units and the use of the
16 common elements.

17 (c) Other provisions which are not inconsistent with
18 this chapter or with the declaration, as may be desired. This
19 subsection is intended to clarify existing law and applies to
20 associations existing on the effective date of this act.

21 Section 76. Subsection (2) of section 718.113, Florida
22 Statutes, is amended to read:

23 718.113 Maintenance; limitation upon improvement;
24 display of flag; hurricane shutters.--

25 (2)(a) Except as otherwise provided in this section,
26 there shall be no material alteration or substantial additions
27 to the common elements or to real property which is
28 association property, except in a manner provided in the
29 declaration as originally recorded or as amended pursuant to
30 the procedures provided therein. If the declaration as
31 originally recorded or amended does not specify the procedure

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1 for approval of material alterations or substantial additions,
2 75 percent of the total voting interests of the association
3 must approve the alterations or additions. This paragraph is
4 intended to clarify existing law and applies to associations
5 existing on the effective date of this act.

6 (b) There shall not be any material alteration of, or
7 substantial addition to, the common elements of any
8 condominium operated by a multicondominium association unless
9 approved in the manner provided in the declaration of the
10 affected condominium or condominiums as originally recorded,
11 or as amended pursuant to the procedures provided therein. If
12 a declaration as originally recorded or amended does not
13 specify a procedure for approving such an alteration or
14 addition, the approval of 75 percent of the total voting
15 interests of each affected condominium is required. This
16 subsection does not prohibit a provision in any declaration,
17 articles of incorporation, or bylaws as originally recorded or
18 amended requiring the approval of unit owners in any
19 condominium operated by the same association or requiring
20 board approval before a material alteration or substantial
21 addition to the common elements is permitted. This paragraph
22 is intended to clarify existing law and applies to
23 associations existing on the effective date of this act.

24 (c) There shall not be any material alteration or
25 substantial addition made to association real property
26 operated by a multicondominium association, except as provided
27 in the declaration, articles of incorporation, or bylaws as
28 said documents are originally recorded or amended pursuant to
29 the procedures provided therein. If the declaration, articles
30 of incorporation, or bylaws do not specify the procedure for
31 approving an alteration or addition to association real

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1 property, the approval of 75 percent of the total voting
2 interests of the association is required. This paragraph is
3 intended to clarify existing law and applies to associations
4 existing on the effective date of this act.

5 Section 77. Paragraphs (b) and (c) of subsection (1)
6 of section 718.115, Florida Statutes, are amended to read:

7 718.115 Common expenses and common surplus.--

8 (1)

9 (b) The common expenses of a condominium within a
10 multicondominium are the common expenses directly attributable
11 to the operation of that condominium. The common expenses of a
12 multicondominium association do not include the common
13 expenses directly attributable to the operation of any
14 specific condominium or condominiums within the
15 multicondominium. This paragraph is intended to clarify
16 existing law and applies to associations existing on the
17 effective date of this act.

18 (c) The common expenses of a multicondominium
19 association may include categories of expenses related to the
20 property or common elements within a specific condominium in
21 the multicondominium if such property or common elements are
22 areas in which all members of the multicondominium association
23 have use rights or from which all members receive tangible
24 economic benefits. Such common expenses of the association
25 shall be identified in the declaration or bylaws of each
26 condominium within the multicondominium association. This
27 paragraph is intended to clarify existing law and applies to
28 associations existing on the effective date of this act.

29 Section 78. Subsections (1) and (4) of section
30 718.405, Florida Statutes, are amended to read:

31 718.405 Multicondominiums; multicondominium

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1 associations.--

2 (1) An association may operate more than one
3 condominium. For multicondominiums created on or after July 1,
4 2000, ~~if~~ the declaration for each condominium ~~to be~~ operated
5 by that association shall provide ~~provides~~ for participation
6 in a multicondominium, in conformity with this section, and
7 disclose ~~discloses~~ or describe ~~describes~~:

8 (a) The manner or formula by which the assets,
9 liabilities, common surplus, and common expenses of the
10 association will be apportioned among the units within the
11 condominiums operated by the association, in accordance with
12 s. 718.104(4)(g) or (h), as applicable.

13 (b) Whether unit owners in any other condominium, or
14 any other persons, will or may have the right to use
15 recreational areas or any other facilities or amenities that
16 are common elements of the condominium, and, if so, the
17 specific formula by which the other users will share the
18 common expenses related to those facilities or amenities.

19 (c) Recreational and other commonly used facilities or
20 amenities which the developer has committed to provide that
21 will be owned, leased by, or dedicated by a recorded plat to
22 the association but which are not included within any
23 condominium operated by the association. The developer may
24 reserve the right to add additional facilities or amenities if
25 the declaration and prospectus for each condominium to be
26 operated by the association contains the following statement
27 in conspicuous type and in substantially the following form:
28 RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT
29 CONSENT OF UNIT OWNERS OR THE ASSOCIATION.

30 (d) The voting rights of the unit owners in the
31 election of directors and in other multicondominium

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1 association affairs when a vote of the owners is taken,
2 including, but not limited to, a statement as to whether each
3 unit owner will have a right to personally cast his or her own
4 vote in all matters voted upon.

5 (4) This section does not prevent or restrict the
6 formation of a multicondominium by the merger or consolidation
7 of two or more condominium associations. Mergers or
8 consolidations of associations shall be accomplished in
9 accordance with this chapter, the declarations of the
10 condominiums being merged or consolidated, and chapter 617.
11 Section 718.110(4) does not apply to amendments to
12 declarations necessary to effect a merger or consolidation.
13 This section is intended to clarify existing law and applies
14 to associations existing on the effective date of this act.

15 Section 79. Subsection (2) of section 718.503, Florida
16 Statutes, is amended to read:

17 718.503 Developer disclosure prior to sale;
18 nondeveloper unit owner disclosure prior to sale;
19 voidability.--

20 (2) NONDEVELOPER DISCLOSURE.--

21 (a) Each unit owner who is not a developer as defined
22 by this chapter shall comply with the provisions of this
23 subsection prior to the sale of his or her unit. Each
24 prospective purchaser who has entered into a contract for the
25 purchase of a condominium unit is entitled, at the seller's
26 expense, to a current copy of the declaration of condominium,
27 articles of incorporation of the association, bylaws, and
28 rules of the association, ~~as well as a copy of the question~~
29 ~~and answer sheet provided for by s. 718.504~~ and a copy of the
30 financial information required by s. 718.111.

31 (b) If a person licensed under part I of chapter 475

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1 provides to or otherwise obtains for a prospective purchaser
2 the documents described in this subsection, the person is not
3 liable for any error or inaccuracy contained in the documents.

4 (c) Each contract entered into after July 1, 1992, for
5 the resale of a residential unit shall contain in conspicuous
6 type either:

7 1. A clause which states: THE BUYER HEREBY
8 ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF
9 THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF
10 THE ASSOCIATION, BYLAWS, RULES OF THE ASSOCIATION, AND A COPY
11 OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION ~~AND THE~~
12 ~~QUESTION AND ANSWER SHEET~~ MORE THAN 3 DAYS, EXCLUDING
13 SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF
14 THIS CONTRACT; or

15 2. A clause which states: THIS AGREEMENT IS VOIDABLE
16 BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION
17 TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND
18 LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT
19 BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE
20 DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS,
21 ~~AND~~ RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT
22 YEAR-END FINANCIAL INFORMATION ~~AND QUESTION AND ANSWER SHEET~~
23 IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE
24 VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND
25 THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS,
26 EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE
27 BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION,
28 BYLAWS, AND RULES, ~~AND QUESTION AND ANSWER SHEET~~ IF REQUESTED
29 IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL
30 TERMINATE AT CLOSING.

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1 A contract that does not conform to the requirements of this
2 paragraph is voidable at the option of the purchaser prior to
3 closing.

4
5 (Redesignate subsequent sections.)

6
7
8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 On page 6, line 9, after the semicolon,

11
12 insert:

13 amending s. 718.1255, F.S., relating to
14 alternative dispute resolution procedures;
15 providing for the expedited handling of any
16 allegation of an irregularity in the election
17 of any director of the board of administration
18 of a condominium; amending s. 702.09, F.S.;
19 revising the definitions of the terms
20 "mortgage" and "foreclosure proceedings";
21 amending s. 718.104, F.S.; revising provisions
22 with respect to declarations for the creation
23 of a condominium; amending s. 718.106, F.S.;
24 revising provisions with respect to
25 appurtenances that pass with a condominium
26 unit; amending s. 718.110, F.S.; revising
27 provisions with respect to amendments to a
28 declaration of condominium; amending s.
29 718.111, F.S.; revising provisions with respect
30 to the association; amending s. 718.112, F.S.;
31 revising provisions with respect to bylaws;

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1 amending s. 718.113, F.S.; revising provisions
2 with respect to material alterations of common
3 elements or association real property operated
4 by a multicondominium association; amending s.
5 718.115, F.S.; revising provisions with respect
6 to common expenses; amending s. 718.405, F.S.;
7 revising provisions with respect to
8 multicondominiums and multicondominium
9 associations; amending s. 718.503, F.S.,
10 relating to disclosure requirements for the
11 sale of certain condominiums; removing the
12 requirement that question and answer sheets be
13 part of the closing documents;

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