

By the Committee on Regulated Industries and Senators Pruitt
and Geller

315-1921-01

1 A bill to be entitled
2 An act relating to condominiums; amending s.
3 718.1255, F.S., relating to alternative dispute
4 resolution procedures; providing for the
5 expedited handling of any allegation of an
6 irregularity in the election of any director of
7 the board of administration of a condominium;
8 amending s. 702.09, F.S.; revising the
9 definitions of the terms "mortgage" and
10 "foreclosure proceedings"; amending s. 718.104,
11 F.S.; revising provisions with respect to
12 declarations for the creation of a condominium;
13 amending s. 718.106, F.S.; revising provisions
14 with respect to appurtenances that pass with a
15 condominium unit; amending s. 718.110, F.S.;
16 revising provisions with respect to amendments
17 to a declaration of condominium; amending s.
18 718.111, F.S.; revising provisions with respect
19 to the association; amending s. 718.112, F.S.;
20 revising provisions with respect to bylaws;
21 amending s. 718.113, F.S.; revising provisions
22 with respect to material alterations of common
23 elements or association real property operated
24 by a multicondominium association; amending s.
25 718.115, F.S.; revising provisions with respect
26 to common expenses; amending s. 718.405, F.S.;
27 revising provisions with respect to
28 multicondominiums and multicondominium
29 associations; amending s. 718.504, F.S.;
30 revising provisions with respect to the
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1 prospectus or offering circular; providing an
2 effective date.

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4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. Section 718.1255, Florida Statutes, is
7 amended to read:

8 718.1255 Alternative dispute resolution; voluntary
9 mediation; mandatory nonbinding arbitration; disputes
10 involving election irregularities; legislative findings.--

11 (1) DEFINITIONS.--As used in this section, the term
12 "dispute" means any disagreement between two or more parties
13 that involves:

14 (a) The authority of the board of directors, under
15 this chapter or association document to:

16 1. Require any owner to take any action, or not to
17 take any action, involving that owner's unit or the
18 appurtenances thereto.

19 2. Alter or add to a common area or element.

20 (b) The failure of a governing body, when required by
21 this chapter or an association document, to:

22 1. Properly conduct elections.

23 2. Give adequate notice of meetings or other actions.

24 3. Properly conduct meetings.

25 4. Allow inspection of books and records.

26

27 "Dispute" does not include any disagreement that primarily
28 involves: title to any unit or common element; the
29 interpretation or enforcement of any warranty; the levy of a
30 fee or assessment, or the collection of an assessment levied
31 against a party; the eviction or other removal of a tenant

1 from a unit; alleged breaches of fiduciary duty by one or more
2 directors; or claims for damages to a unit based upon the
3 alleged failure of the association to maintain the common
4 elements or condominium property.

5 (2) VOLUNTARY MEDIATION.--Voluntary mediation through
6 Citizen Dispute Settlement Centers as provided for in s.
7 44.201 is encouraged.

8 (3) LEGISLATIVE FINDINGS.--

9 (a) The Legislature finds that unit owners are
10 frequently at a disadvantage when litigating against an
11 association. Specifically, a condominium association, with its
12 statutory assessment authority, is often more able to bear the
13 costs and expenses of litigation than the unit owner who must
14 rely on his or her own financial resources to satisfy the
15 costs of litigation against the association.

16 (b) The Legislature finds that the courts are becoming
17 overcrowded with condominium and other disputes, and further
18 finds that alternative dispute resolution has been making
19 progress in reducing court dockets and trials and in offering
20 a more efficient, cost-effective option to court litigation.
21 However, the Legislature also finds that alternative dispute
22 resolution should not be used as a mechanism to encourage the
23 filing of frivolous or nuisance suits.

24 (c) There exists a need to develop a flexible means of
25 alternative dispute resolution that directs disputes to the
26 most efficient means of resolution.

27 (d) The high cost and significant delay of circuit
28 court litigation faced by unit owners in the state can be
29 alleviated by requiring nonbinding arbitration and mediation
30 in appropriate cases, thereby reducing delay and attorney's
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1 fees while preserving the right of either party to have its
2 case heard by a jury, if applicable, in a court of law.

3 (4) MANDATORY NONBINDING ARBITRATION AND MEDIATION OF
4 DISPUTES.--The Division of Florida Land Sales, Condominiums,
5 and Mobile Homes of the Department of Business and
6 Professional Regulation shall employ full-time attorneys to
7 act as arbitrators to conduct the arbitration hearings
8 provided by this chapter. The division may also certify
9 attorneys who are not employed by the division to act as
10 arbitrators to conduct the arbitration hearings provided by
11 this section. No person may be employed by the department as a
12 full-time arbitrator unless he or she is a member in good
13 standing of The Florida Bar. The department shall promulgate
14 rules of procedure to govern such arbitration hearings
15 including mediation incident thereto. The decision of an
16 arbitrator shall be final; however, such a decision shall not
17 be deemed final agency action. Nothing in this provision shall
18 be construed to foreclose parties from proceeding in a trial
19 de novo unless the parties have agreed that the arbitration is
20 binding. If such judicial proceedings are initiated, the final
21 decision of the arbitrator shall be admissible in evidence in
22 the trial de novo.

23 (a) Prior to the institution of court litigation, a
24 party to a dispute shall petition the division for nonbinding
25 arbitration. The petition must be accompanied by a filing fee
26 in the amount of \$50. Filing fees collected under this
27 section must be used to defray the expenses of the alternative
28 dispute resolution program.

29 (b) The petition must recite, and have attached
30 thereto, supporting proof that the petitioner gave the
31 respondents:

1 1. Advance written notice of the specific nature of
2 the dispute;

3 2. A demand for relief, and a reasonable opportunity
4 to comply or to provide the relief; and

5 3. Notice of the intention to file an arbitration
6 petition or other legal action in the absence of a resolution
7 of the dispute.

8
9 Failure to include the allegations or proof of compliance with
10 these prerequisites requires dismissal of the petition without
11 prejudice.

12 (c) Upon receipt, the petition shall be promptly
13 reviewed by the division to determine the existence of a
14 dispute and compliance with the requirements of paragraphs (a)
15 and (b). If emergency relief is required and is not available
16 through arbitration, a motion to stay the arbitration may be
17 filed. The motion must be accompanied by a verified petition
18 alleging facts that, if proven, would support entry of a
19 temporary injunction, and if an appropriate motion and
20 supporting papers are filed, the division may abate the
21 arbitration pending a court hearing and disposition of a
22 motion for temporary injunction.

23 (d) Upon determination by the division that a dispute
24 exists and that the petition substantially meets the
25 requirements of paragraphs (a) and (b) and any other
26 applicable rules, a copy of the petition shall forthwith be
27 served by the division upon all respondents.

28 (e) Either before or after the filing of the
29 respondents' answer to the petition, any party may request
30 that the arbitrator refer the case to mediation under this
31 section and any rules adopted by the division. Upon receipt

1 of a request for mediation, the division shall promptly
2 contact the parties to determine if there is agreement that
3 mediation would be appropriate. If all parties agree, the
4 dispute must be referred to mediation. Notwithstanding a lack
5 of an agreement by all parties, the arbitrator may refer a
6 dispute to mediation at any time.

7 (f) Upon referral of a case to mediation, the parties
8 must select a mutually acceptable mediator. To assist in the
9 selection, the arbitrator shall provide the parties with a
10 list of both volunteer and paid mediators that have been
11 certified by the division under s. 718.501. If the parties
12 are unable to agree on a mediator within the time allowed by
13 the arbitrator, the arbitrator shall appoint a mediator from
14 the list of certified mediators. If a case is referred to
15 mediation, the parties shall attend a mediation conference, as
16 scheduled by the parties and the mediator. If any party fails
17 to attend a duly noticed mediation conference, without the
18 permission or approval of the arbitrator or mediator, the
19 arbitrator must impose sanctions against the party, including
20 the striking of any pleadings filed, the entry of an order of
21 dismissal or default if appropriate, and the award of costs
22 and attorneys' fees incurred by the other parties. Unless
23 otherwise agreed to by the parties or as provided by order of
24 the arbitrator, a party is deemed to have appeared at a
25 mediation conference by the physical presence of the party or
26 its representative having full authority to settle without
27 further consultation, provided that an association may comply
28 by having one or more representatives present with full
29 authority to negotiate a settlement and recommend that the
30 board of administration ratify and approve such a settlement
31 within 5 days from the date of the mediation conference. The

1 parties shall share equally the expense of mediation, unless
2 they agree otherwise.

3 (g) The purpose of mediation as provided for by this
4 section is to present the parties with an opportunity to
5 resolve the underlying dispute in good faith, and with a
6 minimum expenditure of time and resources.

7 (h) Mediation proceedings must generally be conducted
8 in accordance with the Florida Rules of Civil Procedure, and
9 these proceedings are privileged and confidential to the same
10 extent as court-ordered mediation. Persons who are not parties
11 to the dispute are not allowed to attend the mediation
12 conference without the consent of all parties, with the
13 exception of counsel for the parties and corporate
14 representatives designated to appear for a party. If the
15 mediator declares an impasse after a mediation conference has
16 been held, the arbitration proceeding terminates, unless all
17 parties agree in writing to continue the arbitration
18 proceeding, in which case the arbitrator's decision shall be
19 either binding or nonbinding, as agreed upon by the parties;
20 in the arbitration proceeding, the arbitrator shall not
21 consider any evidence relating to the unsuccessful mediation
22 except in a proceeding to impose sanctions for failure to
23 appear at the mediation conference. If the parties do not
24 agree to continue arbitration, the arbitrator shall enter an
25 order of dismissal, and either party may institute a suit in a
26 court of competent jurisdiction. The parties may seek to
27 recover any costs and attorneys' fees incurred in connection
28 with arbitration and mediation proceedings under this section
29 as part of the costs and fees that may be recovered by the
30 prevailing party in any subsequent litigation.

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1 (i) Arbitration shall be conducted according to rules
2 promulgated by the division. The filing of a petition for
3 arbitration shall toll the applicable statute of limitations.

4 (j) At the request of any party to the arbitration,
5 such arbitrator shall issue subpoenas for the attendance of
6 witnesses and the production of books, records, documents, and
7 other evidence and any party on whose behalf a subpoena is
8 issued may apply to the court for orders compelling such
9 attendance and production. Subpoenas shall be served and shall
10 be enforceable in the manner provided by the Florida Rules of
11 Civil Procedure. Discovery may, in the discretion of the
12 arbitrator, be permitted in the manner provided by the Florida
13 Rules of Civil Procedure. Rules adopted by the division may
14 authorize any reasonable sanctions except contempt for a
15 violation of the arbitration procedural rules of the division
16 or for the failure of a party to comply with a reasonable
17 nonfinal order issued by an arbitrator which is not under
18 judicial review.

19 (k) The arbitration decision shall be presented to the
20 parties in writing. An arbitration decision is final in those
21 disputes in which the parties have agreed to be bound. An
22 arbitration decision is also final if a complaint for a trial
23 de novo is not filed in a court of competent jurisdiction in
24 which the condominium is located within 30 days. The right to
25 file for a trial de novo entitles the parties to file a
26 complaint in the appropriate trial court for a judicial
27 resolution of the dispute. The prevailing party in an
28 arbitration proceeding shall be awarded the costs of the
29 arbitration and reasonable attorney's fees in an amount
30 determined by the arbitrator. Such an award shall include the
31 costs and reasonable attorney's fees incurred in the

1 arbitration proceeding as well as the costs and reasonable
2 attorney's fees incurred in preparing for and attending any
3 scheduled mediation.

4 (1) The party who files a complaint for a trial de
5 novo shall be assessed the other party's arbitration costs,
6 court costs, and other reasonable costs, including attorney's
7 fees, investigation expenses, and expenses for expert or other
8 testimony or evidence incurred after the arbitration hearing
9 if the judgment upon the trial de novo is not more favorable
10 than the arbitration decision. If the judgment is more
11 favorable, the party who filed a complaint for trial de novo
12 shall be awarded reasonable court costs and attorney's fees.

13 (m) Any party to an arbitration proceeding may enforce
14 an arbitration award by filing a petition in a court of
15 competent jurisdiction in which the condominium is located. A
16 petition may not be granted unless the time for appeal by the
17 filing of a complaint for trial de novo has expired. If a
18 complaint for a trial de novo has been filed, a petition may
19 not be granted with respect to an arbitration award that has
20 been stayed. If the petition for enforcement is granted, the
21 petitioner shall recover reasonable attorney's fees and costs
22 incurred in enforcing the arbitration award. A mediation
23 settlement may also be enforced through the county or circuit
24 court, as applicable, and any costs and fees incurred in the
25 enforcement of a settlement agreement reached at mediation
26 must be awarded to the prevailing party in any enforcement
27 action.

28 (5) DISPUTES INVOLVING ELECTION IRREGULARITIES.--Every
29 arbitration petition received by the division and required to
30 be filed under this section challenging the legality of the
31 election of any director of the board of administration shall

1 be handled on an expedited basis in the manner provided by
2 division rules for recall arbitration disputes.

3 Section 2. Section 702.09, Florida Statutes, is
4 amended to read:

5 702.09 Definitions.--For the purposes of ss. 702.07
6 and 702.08 the words "decree of foreclosure" shall include a
7 judgment or order rendered or passed in the foreclosure
8 proceedings in which the decree of foreclosure shall be
9 rescinded, vacated, and set aside; the word "mortgage" shall
10 mean any written instrument securing the payment of money or
11 advances and shall include liens to secure payment of
12 assessments arising under chapters 718, 719, and 720; the word
13 "debt" shall include promissory notes, bonds, and all other
14 written obligations given for the payment of money; the words
15 "foreclosure proceedings" shall embrace every action in the
16 circuit or county courts of this state wherein it is sought to
17 foreclose a mortgage and sell the property covered by the
18 same; and the word "property" shall mean and include both real
19 and personal property.

20 Section 3. Paragraph (h) of subsection (4) and
21 subsection (5) of section 718.104, Florida Statutes, are
22 amended to read:

23 718.104 Creation of condominiums; contents of
24 declaration.--Every condominium created in this state shall be
25 created pursuant to this chapter.

26 (4) The declaration must contain or provide for the
27 following matters:

28 (h) If a developer reserves the right, in a
29 declaration recorded on or after July 1, 2000, to create a
30 multicondominium, the declaration must state, or provide a
31 specific formula for determining, the fractional or percentage

1 shares of liability for the common expenses of the association
2 and of ownership of the common surplus of the association to
3 be allocated to the units in each condominium to be operated
4 by the association. If ~~a the~~ declaration recorded on or after
5 July 1, 2000, for a condominium operated by a multicondominium
6 association, as originally recorded, fails to so provide, the
7 share of liability for the common expenses of the association
8 and of ownership of the common surplus of the association
9 allocated to each unit in each condominium operated by the
10 association shall be a fraction of the whole, the numerator of
11 which is the number "one" and the denominator of which is the
12 total number of units in all condominiums operated by the
13 association.

14 (5) The declaration as originally recorded, or as
15 amended pursuant to the procedures provided therein, may
16 include covenants and restrictions concerning the use,
17 occupancy, and transfer of the units permitted by law with
18 reference to real property. With the exception of amendments
19 that materially modify unit appurtenances as provided in s.
20 718.110(4), amendments may be applied to owners of units
21 existing as of the effective date of the amendment. This
22 section is intended to clarify existing law and applies to
23 associations existing on the effective date of this act.
24 However, the rule against perpetuities shall not defeat a
25 right given any person or entity by the declaration for the
26 purpose of allowing unit owners to retain reasonable control
27 over the use, occupancy, and transfer of units.

28 Section 4. Paragraph (b) of subsection (2) of section
29 718.106, Florida Statutes, is amended to read:

30 718.106 Condominium parcels; appurtenances; possession
31 and enjoyment.--

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

3 (b) The exclusive right to use such portion of the
4 common elements as may be provided by the declaration,
5 including the right to transfer such right to other units or
6 unit owners to the extent authorized by the declaration as
7 originally recorded, or amendments to the declaration adopted
8 pursuant to the provisions contained therein ~~under s.~~
9 718.110(2). Amendments to declarations of condominium
10 providing for the transfer of use rights with respect to
11 limited common elements are not amendments which materially
12 modify unit appurtenances as described in s. 718.110(4).
13 However, in order to be effective, the transfer of use rights
14 with respect to limited common elements must be effectuated in
15 conformity with the procedures set forth in the declaration as
16 originally recorded or as amended. Further, such transfers
17 must be evidenced by a written instrument which must be
18 executed with the formalities of a deed and recorded in the
19 land records of the county in which the condominium is located
20 in order to be effective. Such instrument of transfer must
21 also specify the legal description of the unit which is
22 transferring use rights, as well as the legal description of
23 the unit obtaining the transfer of such rights. This section
24 is intended to clarify existing law and applies to
25 associations existing on the effective date of this act.

26 Section 5. Subsection (4) of section 718.110, Florida
27 Statutes, is amended to read:

28 718.110 Amendment of declaration; correction of error
29 or omission in declaration by circuit court.--

30 (4) Unless otherwise provided in the declaration as
31 originally recorded, no amendment may change the configuration

1 or size of any unit in any material fashion, materially alter
2 or modify the appurtenances to the unit, or change the
3 proportion or percentage by which the unit owner shares the
4 common expenses of the condominium and owns the common surplus
5 of the condominium unless the record owner of the unit and all
6 record owners of liens on the unit join in the execution of
7 the amendment and unless all the record owners of all other
8 units in the same condominium approve the amendment. The
9 acquisition of property by the association, and material
10 alterations or substantial additions to such property or the
11 common elements by the association in accordance with s.
12 718.111(7) or s. 718.113, amendments providing for the
13 transfer of use rights in limited common elements pursuant to
14 s. 718.106(2)(b), and amendments restricting or modifying the
15 right to lease condominium units shall not be deemed to
16 constitute a material alteration or modification of the
17 appurtenances to the units. With the exception of amendments
18 that materially modify unit appurtenances as provided in this
19 section, amendments may be applied to owners of units existing
20 as of the effective date of the amendment. This section is
21 intended to clarify existing law and applies to associations
22 existing on the effective date of this act.A declaration
23 recorded after April 1, 1992, may not require the approval of
24 less than a majority of total voting interests of the
25 condominium for amendments under this subsection, unless
26 otherwise required by a governmental entity.

27 Section 6. Subsection (4), paragraph (a) of subsection
28 (7), and subsection (13) of section 718.111, Florida Statutes,
29 are amended to read:

30 718.111 The association.--

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1 (4) ASSESSMENTS; MANAGEMENT OF COMMON ELEMENTS.--The
2 association has the power to make and collect assessments and
3 to lease, maintain, repair, and replace the common elements or
4 association property; however, the association may not charge
5 a use fee against a unit owner for the use of common elements
6 or association property unless otherwise provided for in the
7 declaration of condominium or by a majority vote of the
8 association or unless the charges relate to ~~expenses incurred~~
9 ~~by~~ an owner having exclusive use of the common elements or
10 association property.

11 (7) TITLE TO PROPERTY.--

12 (a) The association has the power to acquire title to
13 property or otherwise hold, convey, lease, and mortgage
14 association property for the use and benefit of its members.
15 The power to acquire personal property shall be exercised by
16 the board of administration. Except as otherwise permitted in
17 subsections (8) and (9) and in s. 718.114, no association may
18 acquire, convey, ~~lease~~, or mortgage association real property
19 except in the manner provided in the declaration, and if the
20 declaration does not specify the procedure, then approval of
21 75 percent of the total voting interests shall be required.

22 (13) FINANCIAL REPORTING.--Within 90 days after the
23 end of the fiscal year, or annually on a date provided in the
24 bylaws, the association shall prepare and complete, or
25 contract for the preparation and completion of ~~cause to be~~
26 ~~prepared and completed by a third party~~, a financial report
27 for the preceding fiscal year. Within 21 days after the final
28 financial report is completed by the association or received
29 ~~by the association~~ from the third party, but in no event later
30 than 120 days after the end of the fiscal year, or such other
31 date as is provided in the bylaws, the association shall mail

1 to each unit owner at the address last furnished to the
2 association by the unit owner, or hand deliver to each unit
3 owner, a copy of the financial report or a notice that a copy
4 of the financial report will be mailed or hand delivered to
5 the unit owner, without charge, upon receipt of a written
6 request from the unit owner. The division shall adopt rules
7 setting forth uniform accounting principles and standards to
8 be used by all associations and shall adopt rules addressing
9 financial reporting requirements for multicondominium
10 associations. In adopting such rules, the division shall
11 consider the number of members and annual revenues of an
12 association. Financial reports shall be prepared as follows:

13 (a) An association that meets the criteria of this
14 paragraph shall prepare or cause to be prepared a complete set
15 of financial statements in accordance with generally accepted
16 accounting principles. The financial statements shall be
17 based upon the association's total annual revenues, as
18 follows:

19 1. An association with total annual revenues of
20 \$100,000 or more, but less than \$200,000, shall prepare
21 compiled financial statements.

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

25 3. An association with total annual revenues of
26 \$400,000 or more shall prepare audited financial statements.

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

30 2. An association which operates less than 50 units,
31 regardless of the association's annual revenues, shall prepare

1 a report of cash receipts and expenditures in lieu of
2 financial statements required by paragraph (a).
3 3. A report of cash receipts and disbursements must
4 disclose the amount of receipts by accounts and receipt
5 classifications and the amount of expenses by accounts and
6 expense classifications, including, but not limited to, the
7 following, as applicable: costs for security, professional and
8 management fees and expenses, taxes, costs for recreation
9 facilities, expenses for refuse collection and utility
10 services, expenses for lawn care, costs for building
11 maintenance and repair, insurance costs, administration and
12 salary expenses, and reserves accumulated and expended for
13 capital expenditures, deferred maintenance, and any other
14 category for which the association maintains reserves.
15 (c) An association may prepare or cause to be
16 prepared, without a meeting of or approval by the unit owners:
17 1. Compiled, reviewed, or audited financial
18 statements, if the association is required to prepare a report
19 of cash receipts and expenditures;
20 2. Reviewed or audited financial statements, if the
21 association is required to prepare compiled financial
22 statements; or
23 3. Audited financial statements if the association is
24 required to prepare reviewed financial statements.
25 (d) If approved by a majority of the voting interests
26 present at a properly called meeting of the association, an
27 association may prepare or cause to be prepared:
28 1. A report of cash receipts and expenditures in lieu
29 of a compiled, reviewed, or audited financial statement;
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1 2. A report of cash receipts and expenditures or a
2 compiled financial statement in lieu of a reviewed or audited
3 financial statement; or

4 3. A report of cash receipts and expenditures, a
5 compiled financial statement, or a reviewed financial
6 statement in lieu of an audited financial statement.

7
8 Such meeting and approval must occur prior to the end of the
9 fiscal year and is effective only for the fiscal year in which
10 the vote is taken. With respect to an association to which the
11 developer has not turned over control of the association, all
12 unit owners, including the developer, may vote on issues
13 related to the preparation of financial reports for the first
14 2 fiscal years of the association's operation, beginning with
15 the fiscal year in which the declaration is recorded.
16 Thereafter, all unit owners except the developer may vote on
17 such issues until control is turned over to the association by
18 the developer.

19 Section 7. Subsection (3) of section 718.112, Florida
20 Statutes, is amended to read:

21 718.112 Bylaws.--

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

25 (a) A method of adopting and amending administrative
26 rules and regulations governing the details of the operation
27 and use of the common elements.

28 (b) Restrictions on and requirements for the use,
29 maintenance, and appearance of the units and the use of the
30 common elements.

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

5 Section 8. Subsection (2) of section 718.113, Florida
6 Statutes, is amended to read:

7 718.113 Maintenance; limitation upon improvement;
8 display of flag; hurricane shutters.--

9 (2)(a) Except as otherwise provided in this section,
10 there shall be no material alteration or substantial additions
11 to the common elements or to real property which is
12 association property, except in a manner provided in the
13 declaration as originally recorded or as amended pursuant to
14 the procedures provided therein. If the declaration as
15 originally recorded or amended does not specify the procedure
16 for approval of material alterations or substantial additions,
17 75 percent of the total voting interests of the association
18 must approve the alterations or additions. This paragraph is
19 intended to clarify existing law and applies to associations
20 existing on the effective date of this act.

21 (b) There shall not be any material alteration of, or
22 substantial addition to, the common elements of any
23 condominium operated by a multicondominium association unless
24 approved in the manner provided in the declaration of the
25 affected condominium or condominiums as originally recorded,
26 or as amended pursuant to the procedures provided therein. If
27 a declaration as originally recorded or amended does not
28 specify a procedure for approving such an alteration or
29 addition, the approval of 75 percent of the total voting
30 interests of each affected condominium is required. This
31 subsection does not prohibit a provision in any declaration,

1 articles of incorporation, or bylaws as originally recorded or
2 amended requiring the approval of unit owners in any
3 condominium operated by the same association or requiring
4 board approval before a material alteration or substantial
5 addition to the common elements is permitted. This paragraph
6 is intended to clarify existing law and applies to
7 associations existing on the effective date of this act.

8 (c) There shall not be any material alteration or
9 substantial addition made to association real property
10 operated by a multicondominium association, except as provided
11 in the declaration, articles of incorporation, or bylaws as
12 said documents are originally recorded or amended pursuant to
13 the procedures provided therein. If the declaration, articles
14 of incorporation, or bylaws do not specify the procedure for
15 approving an alteration or addition to association real
16 property, the approval of 75 percent of the total voting
17 interests of the association is required. This paragraph is
18 intended to clarify existing law and applies to associations
19 existing on the effective date of this act.

20 Section 9. Paragraphs (b) and (c) of subsection (1) of
21 section 718.115, Florida Statutes, are amended to read:

22 718.115 Common expenses and common surplus.--

23 (1)

24 (b) The common expenses of a condominium within a
25 multicondominium are the common expenses directly attributable
26 to the operation of that condominium. The common expenses of a
27 multicondominium association do not include the common
28 expenses directly attributable to the operation of any
29 specific condominium or condominiums within the
30 multicondominium. This paragraph is intended to clarify
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1 existing law and applies to associations existing on the
2 effective date of this act.

3 (c) The common expenses of a multicondominium
4 association may include categories of expenses related to the
5 property or common elements within a specific condominium in
6 the multicondominium if such property or common elements are
7 areas in which all members of the multicondominium association
8 have use rights or from which all members receive tangible
9 economic benefits. Such common expenses of the association
10 shall be identified in the declaration or bylaws of each
11 condominium within the multicondominium association. This
12 paragraph is intended to clarify existing law and applies to
13 associations existing on the effective date of this act.

14 Section 10. Subsections (1) and (4) of section
15 718.405, Florida Statutes, are amended to read:

16 718.405 Multicondominiums; multicondominium
17 associations.--

18 (1) An association may operate more than one
19 condominium. For multicondominiums created on or after July 1,
20 2000, ~~if~~ the declaration for each condominium ~~to be~~ operated
21 by that association shall provide ~~provides~~ for participation
22 in a multicondominium, in conformity with this section, and
23 disclose ~~discloses~~ or describe ~~describes~~:

24 (a) The manner or formula by which the assets,
25 liabilities, common surplus, and common expenses of the
26 association will be apportioned among the units within the
27 condominiums operated by the association, in accordance with
28 s. 718.104(4)(g) or (h), as applicable.

29 (b) Whether unit owners in any other condominium, or
30 any other persons, will or may have the right to use
31 recreational areas or any other facilities or amenities that

1 are common elements of the condominium, and, if so, the
2 specific formula by which the other users will share the
3 common expenses related to those facilities or amenities.

4 (c) Recreational and other commonly used facilities or
5 amenities which the developer has committed to provide that
6 will be owned, leased by, or dedicated by a recorded plat to
7 the association but which are not included within any
8 condominium operated by the association. The developer may
9 reserve the right to add additional facilities or amenities if
10 the declaration and prospectus for each condominium to be
11 operated by the association contains the following statement
12 in conspicuous type and in substantially the following form:
13 RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT
14 CONSENT OF UNIT OWNERS OR THE ASSOCIATION.

15 (d) The voting rights of the unit owners in the
16 election of directors and in other multicondominium
17 association affairs when a vote of the owners is taken,
18 including, but not limited to, a statement as to whether each
19 unit owner will have a right to personally cast his or her own
20 vote in all matters voted upon.

21 (4) This section does not prevent or restrict the
22 formation of a multicondominium by the merger or consolidation
23 of two or more condominium associations. Mergers or
24 consolidations of associations shall be accomplished in
25 accordance with this chapter, the declarations of the
26 condominiums being merged or consolidated, and chapter 617.
27 Section 718.110(4) does not apply to amendments to
28 declarations necessary to effect a merger or consolidation.
29 This section is intended to clarify existing law and applies
30 to associations existing on the effective date of this act.

31

1 Section 11. Subsection (15) of section 718.504,
2 Florida Statutes, is amended to read:

3 718.504 Prospectus or offering circular.--Every
4 developer of a residential condominium which contains more
5 than 20 residential units, or which is part of a group of
6 residential condominiums which will be served by property to
7 be used in common by unit owners of more than 20 residential
8 units, shall prepare a prospectus or offering circular and
9 file it with the Division of Florida Land Sales, Condominiums,
10 and Mobile Homes prior to entering into an enforceable
11 contract of purchase and sale of any unit or lease of a unit
12 for more than 5 years and shall furnish a copy of the
13 prospectus or offering circular to each buyer. In addition to
14 the prospectus or offering circular, each buyer shall be
15 furnished a separate page entitled "Frequently Asked Questions
16 and Answers," which shall be in accordance with a format
17 approved by the division and a copy of the financial
18 information required by s. 718.111. This page shall, in
19 readable language, inform prospective purchasers regarding
20 their voting rights and unit use restrictions, including
21 restrictions on the leasing of a unit; shall indicate whether
22 and in what amount the unit owners or the association is
23 obligated to pay rent or land use fees for recreational or
24 other commonly used facilities; shall contain a statement
25 identifying that amount of assessment which, pursuant to the
26 budget, would be levied upon each unit type, exclusive of any
27 special assessments, and which shall further identify the
28 basis upon which assessments are levied, whether monthly,
29 quarterly, or otherwise; shall state and identify any court
30 cases in which the association is currently a party of record
31 in which the association may face liability in excess of

1 \$100,000; and which shall further state whether membership in
2 a recreational facilities association is mandatory, and if so,
3 shall identify the fees currently charged per unit type. The
4 division shall by rule require such other disclosure as in its
5 judgment will assist prospective purchasers. The prospectus or
6 offering circular may include more than one condominium,
7 although not all such units are being offered for sale as of
8 the date of the prospectus or offering circular. The
9 prospectus or offering circular must contain the following
10 information:

11 (15) If a ~~the~~ condominium created on or after July 1,
12 2000, is or may become part of a multicondominium, the
13 following information must be provided:

14 (a) A statement in conspicuous type in substantially
15 the following form: THIS CONDOMINIUM IS (MAY BE) PART OF A
16 MULTICONDOMINIUM DEVELOPMENT IN WHICH OTHER CONDOMINIUMS WILL
17 (MAY) BE OPERATED BY THE SAME ASSOCIATION. Immediately
18 following this statement, the location in the prospectus or
19 offering circular and its exhibits where the multicondominium
20 aspects of the offering are described must be stated.

21 (b) A summary of the provisions in the declaration,
22 articles of incorporation, and bylaws which establish and
23 provide for the operation of the multicondominium, including a
24 statement as to whether unit owners in the condominium will
25 have the right to use recreational or other facilities located
26 or planned to be located in other condominiums operated by the
27 same association, and the manner of sharing the common
28 expenses related to such facilities.

29 (c) A statement of the minimum and maximum number of
30 condominiums, and the minimum and maximum number of units in
31 each of those condominiums, which will or may be operated by

1 the association, and the latest date by which the exact number
2 will be finally determined.

3 (d) A statement as to whether any of the condominiums
4 in the multicondominium may include units intended to be used
5 for nonresidential purposes and the purpose or purposes
6 permitted for such use.

7 (e) A general description of the location and
8 approximate acreage of any land on which any additional
9 condominiums to be operated by the association may be located.

10 Section 12. This act shall take effect July 1, 2001.

11
12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 SB 348

15 This bill provides for expedited arbitration of condominium
16 elections disputes by the Division of Land Sales,
17 Condominiums, and Mobile Homes of the Department of Business
18 and Professional Regulation (division) whereby the division is
19 required to respond to the challenge in the same manner as
20 provided in division rule for recall arbitration disputes. The
21 bill also modifies the definitions of the terms "mortgage" and
22 "foreclosure proceedings" to provide that condominium
23 association assessment liens are included within those liens
24 that are reinstated if a foreclosure judgment is vacated. The
25 bill clarifies current law regarding multicondominium
26 associations, clarifies current law regarding the ability of
27 condominium associations to restrict condominium leasing
28 rights of existing owners through amendments, and clarifies
29 unit owners' ability to amend declarations of condominium to
30 permit the transfer of limited common elements. The bill
31 extends the filing deadline for financial reports, clarifies
current law regarding condominium bylaws, and clarifies
current law regarding an association's right to amend
declarations to provide for material alterations or
substantial additions to common elements and association
property. Finally, the bill makes certain laws applicable to
associations in existence on the date this bill takes effect.