

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 694

SPONSOR: Regulated Industries Committee & Senator Geller

SUBJECT: Condominiums, Cooperatives, and Homeowners' Associations

DATE: February 6, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	RI	Favorable/CS
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill:

- Provides for the transfer of use rights with respect to limited common elements.
- Provides for the inclusion of specified provisions in declarations or bylaws through amendment.
- Clarifies that a number of multicondominium statutes created in 2000 apply to multicondominiums created on or after July 1, 2000.
- Allows associations an additional 30 days to mail the final financial report to unit owners.
- Requires that arbitration petitions challenging the legality of the election of any director of a board of administrations be handled on an expedited basis.
- Deletes a requirement that pre-sale disclosures include a question and answer sheet.

The bill substantially amends the following sections of the Florida Statutes: 702.09, 718.104, 718.106, 718.110, 718.111, 718.112, 718.113, 718.115, 718.1255, 718.405, 718.503, and 718.504.

II. Present Situation:

Chapter 718, F.S., the “Condominium Act,” governs condominium associations. A condominium is “that form of ownership of real property which is created pursuant to the provisions of this chapter, which is comprised 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.” The term “multicondominium” is defined in ch. 718, F.S., to mean “a real estate development containing two or more condominiums, all of which are operated by the same association.”

Further discussion regarding the present situation is addressed within the section-by-section analysis below.

III. Effect of Proposed Changes:

Section 1. Amends s. 702.09, F.S., to include association assessment liens within the definition of the term “mortgage” for purposes of including them among those liens that are reinstated if a foreclosure judgment is vacated.

Section 2. Amends s. 718.104, F.S., regarding the creation of multicondominiums and the contents of declarations of condominium (declaration). Chapter 2000-302, L.O.F., created paragraph (h) of subsection (4) of section 718.104, F.S., relating to declarations. A declaration recorded on or after July 1, 2000, in which the developer reserves the right to create a multicondominium development, must state, or provide a specific formula for determining, the fractional or percentage shares of liability for common expenses and of ownership of the common surplus to be allocated to the units in each condominium to be operated by the association. If the declaration does not set forth such information, then the share of liability for the common expenses of the association and ownership of the common surplus of the association allocated to each unit shall be a fraction of the whole where the numerator is 1 and the denominator is the total number of units in the condominiums operated by the association.

The bill clarifies that the provisions of s. 718.104(4)(h), F.S., apply to multicondominium declarations recorded on or after July 1, 2000.

The bill provides that covenants and restrictions may be included in the declaration through amendment.

Section 3. Amends 718.106, F.S., regarding transfer of limited common elements.

Currently, s. 718.106(2)(b), F.S., provides that the exclusive right to use common elements as provided in the declaration, “including the right to transfer such right to other units or unit owners to the extent authorized by the declaration as originally recorded, or amendments to the declaration adopted under s. 718.110(2),” is an appurtenance passing with the unit. Section 718.107, F.S., prohibits a unit owner from transferring the rights in common elements separate from sale or transfer of the appurtenant condominium unit. Case law applies this prohibition to the conveyance of a limited common elements that has been assigned to a particular unit. *See, Brown v. Rice*, 716 So.2d 807 (Fla. 5th DCA 1998). Parking spaces are the most common example of a limited common element.

The bill specifies that amendments to declarations of condominiums providing for the transfer of use rights with respect to limited common elements are not amendments that materially modify unit appurtenances as described in s. 718.110(4), F.S. (That section prohibits such amendments to the declaration.) The transfer must be effectuated according to procedures set forth in the original declaration or as amended. The bill states that this is intended to clarify existing law and to apply to existing associations.

Section 4. Amends s. 718.110(4), F.S., which contains general prohibitions against specified types of amendments to declarations. In general, unless otherwise provided in the declaration as originally recorded, no amendment may 1) change the configuration or size of any unit in any material fashion, 2) materially alter or modify the appurtenances to the unit, or 3) change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium. 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 amends this section to specifically provide that amendments providing for the transfer rights discussed above do not constitute such a prohibited amendment.

Section 5. Amends s. 718.111(13), F.S., which requires that within 90 days after the end of the fiscal year, the association must prepare or cause to be prepared by a third party the annual financial report.

The bill requires that the association have contracted with a third party within 90 days, and have mailed the final financial report to unit owners no later than 120 days after the end of the fiscal year.

Section 6. Amends s. 718.112, F.S., relating to bylaws to provide that optional provisions may be included in the bylaws by amendment.

Section 7. Amends s. 718.113, F.S., relating to material alterations or substantial additions to the condominium property. Prior to 1992, material alterations or substantial additions to common elements or association real property were prohibited unless provided for in the declaration. In 1992, this section was amended to provide that 75 percent of the total voting interests of the association could approve such alterations if not contained in the declaration. s. 3, Ch. 92-49, L.O.F. In 2000, this was made applicable to multicondominium associations. s. 53, Ch. 2000-302, L.O.F. Case law holds, however, that declarations recorded prior to the 1992 statute that are silent regarding material alterations cannot be subsequently amended. *See, Wellington Property Management v. Parc Corniche Condominium Association*, 755 So.2d 824 (Fla. 5th DCA 2000). In *Wellington*, unit owners attempted to amend their declaration based upon a general power in the declaration that allowed for amendment by a 51% vote of the owners. The Court held that the amendment would defeat the vested contract rights of pre-amendment owners and that retroactive application of the 1992 amendments to s. 718.113, F.S., would be a substantive change that would unconstitutionally interfere with the unit owners' vested contractual rights regarding the original use of the common elements. *Wellington*, at 828.

The bill allows amendment of declarations to provide procedures for amendments to authorize approving material alterations to common elements. It states that the changes are intended to clarify existing law and apply to existing associations.

Section 8. Makes similar amendments to s. 718.115, F.S., relating to common expenses.

Section 9. Amends s. 718.1255, F.S., to require that arbitration petitions challenging the legality of the election of any director of a board of administrations be handled on an expedited basis.

Section 10. Amends s. 718.405, F.S., which was created by section 59 of chapter 2000-302, L.O.F., and which provides for creation and operation of multicondominiums to clarify that the section applies to multicondominiums created on or after July 1, 2000.

Section 11. Amends s. 718.503(2), F.S., on nondeveloper disclosure prior to sale to delete a requirement that pre-sale disclosures include a question and answer sheet.

Section 12. Amends s. 718.504(15), F.S., to provide that prospectus or offering circular requirements that relate to multicondominiums apply only if the condominium was created on or after July 1, 2000.

Section 13. Provides that this bill take effect on July 1, 2002.

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:

Indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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