

Amendment No. 01 (for drafter's use only)

| | <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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The Committee on Judicial Oversight offered the following:

Amendment

On page 3, line 20 through page 10, line 21,
remove: all of said lines

and insert:

(5) The declaration as originally recorded or as amended under the procedures provided therein may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property. However, the rule against perpetuities shall not defeat a right given any person or entity by the declaration for the purpose of allowing unit owners to retain reasonable control over the use, occupancy, and transfer of units.

Section 3. Paragraph (b) of subsection (2) of section 718.106, Florida Statutes, is amended to read:

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

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

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1 (b) The exclusive right to use such portion of the
2 common elements as may be provided by the declaration,
3 including the right to transfer such right to other units or
4 unit owners to the extent authorized by the declaration as
5 originally recorded, or amendments to the declaration adopted
6 pursuant to the provisions contained therein ~~under s.~~
7 ~~718.110(2)~~. Amendments to declarations of condominium
8 providing for the transfer of use rights with respect to
9 limited common elements are not amendments that materially
10 modify unit appurtenances as described in s. 718.110(4).
11 However, in order to be effective, the transfer of use rights
12 with respect to limited common elements must be effectuated in
13 conformity with the procedures set forth in the declaration as
14 originally recorded or as amended under the procedures
15 provided therein. This section is intended to clarify
16 existing law and applies to associations existing on the
17 effective date of this act.

18 Section 4. Subsection (4) of section 718.110, Florida
19 Statutes, is amended to read:

20 718.110 Amendment of declaration; correction of error
21 or omission in declaration by circuit court.--

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

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1 acquisition of property by the association, and material
2 alterations or substantial additions to such property or the
3 common elements by the association in accordance with s.
4 718.111(7) or s. 718.113, and amendments providing for the
5 transfer of use rights in limited common elements pursuant to
6 s. 718.106(2)(b), shall not be deemed to constitute a material
7 alteration or modification of the appurtenances to the units.
8 A declaration recorded after April 1, 1992, may not require
9 the approval of less than a majority of total voting interests
10 of the condominium for amendments under this subsection,
11 unless otherwise required by a governmental entity.

12 Section 5. Subsection (4), paragraph (a) of subsection
13 (7), and subsection (13) of section 718.111, Florida Statutes,
14 are amended to read:

15 718.111 The association.--

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

26 (7) TITLE TO PROPERTY.--

27 (a) The association has the power to acquire title to
28 property or otherwise hold, convey, lease, and mortgage
29 association property for the use and benefit of its members.
30 The power to acquire personal property shall be exercised by
31 the board of administration. Except as otherwise permitted in

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1 subsections (8) and (9) and in s. 718.114, no association may
2 acquire, convey, lease, or mortgage association real property
3 except in the manner provided in the declaration, and if the
4 declaration does not specify the procedure, then approval of
5 75 percent of the total voting interests shall be required.

6 (13) FINANCIAL REPORTING.--Within 90 days after the
7 end of the fiscal year, or annually on a date provided in the
8 bylaws, the association shall prepare and complete, or
9 contract for the preparation and completion of ~~or cause to be~~
10 ~~prepared and completed by a third party,~~ a financial report
11 for the preceding fiscal year. Within 21 days after the final
12 financial report is completed by the association or received
13 ~~by the association~~ from the third party, but not later than
14 120 days after the end of the fiscal year or other date as
15 provided in the bylaws, the association shall mail to each
16 unit owner at the address last furnished to the association by
17 the unit owner, or hand deliver to each unit owner, a copy of
18 the financial report or a notice that a copy of the financial
19 report will be mailed or hand delivered to the unit owner,
20 without charge, upon receipt of a written request from the
21 unit owner. The division shall adopt rules setting forth
22 uniform accounting principles and standards to be used by all
23 associations and shall adopt rules addressing financial
24 reporting requirements for multicondominium associations. In
25 adopting such rules, the division shall consider the number of
26 members and annual revenues of an association. Financial
27 reports shall be prepared as follows:

28 (a) An association that meets the criteria of this
29 paragraph shall prepare or cause to be prepared a complete set
30 of financial statements in accordance with generally accepted
31 accounting principles. The financial statements shall be

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1 based upon the association's total annual revenues, as
2 follows:

3 1. An association with total annual revenues of
4 \$100,000 or more, but less than \$200,000, shall prepare
5 compiled financial statements.

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

9 3. An association with total annual revenues of
10 \$400,000 or more shall prepare audited financial statements.

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

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

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

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

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

4 2. Reviewed or audited financial statements, if the
5 association is required to prepare compiled financial
6 statements; or

7 3. Audited financial statements if the association is
8 required to prepare reviewed financial statements.

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

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

14 2. A report of cash receipts and expenditures or a
15 compiled financial statement in lieu of a reviewed or audited
16 financial statement; or

17 3. A report of cash receipts and expenditures, a
18 compiled financial statement, or a reviewed financial
19 statement in lieu of an audited financial statement.

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

29 Thereafter, all unit owners except the developer may vote on
30 such issues until control is turned over to the association by
31 the developer.

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

3 718.112 Bylaws.--

4 (3) OPTIONAL PROVISIONS.--The bylaws as originally
5 recorded or as amended under the procedures provided therein
6 may provide for the following:

7 (a) A method of adopting and amending administrative
8 rules and regulations governing the details of the operation
9 and use of the common elements.

10 (b) Restrictions on and requirements for the use,
11 maintenance, and appearance of the units and the use of the
12 common elements.

13 (c) Other provisions which are not inconsistent with
14 this chapter or with the declaration, as may be desired.

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