

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/CS/CS/SB 1184

SPONSOR: Health, Aging, and Long-Term Care and Comprehensive Planning Committees, Senators Campbell and Lynn

SUBJECT: Community Associations

DATE: March 29, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Favorable/CS</u>
2.	<u>Parham</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
3.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable</u>
4.	<u>Cibula</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable/CS</u>
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill makes several changes to laws governing community associations, including condominium associations, cooperative associations, and homeowner's associations. Specifically, the bill:

Condominiums

- Provides immunity from liability to condominium associations and their agents for providing information to prospective purchasers that is not required to be provided by law;
- Requires nondeveloper sellers of condominium units to provide prospective purchasers with a document titled "Frequently Asked Questions and Answers;"
- Requires condominium associations to provide written notice to all members 14 days before a meeting of the board of the association that will consider assessments and rules regulating the use of parcels;
- Provides that the only voting interests entitled to vote on reducing the funding of reserves or using the reserves for a purpose for which the reserves were not intended are the voting interests that funded the reserves;
- Provides that an amendment to a declaration of condominium that restricts the rental rights of unit owners applies only to a unit owners that consent to the restriction and to unit owners who purchase their units after the effective date of the amendment, unless expressly stated to the contrary in the amendment;
- Requires an amendment to a declaration of condominium that restricts the rental rights of nonconsenting condominium unit owners to be approved by at least three-fourths of the voting interests in the association;

Firesafety

- Authorizes voting by limited proxy on votes to forego retrofitting a condominium or cooperative with a fire sprinkler system;
- Requires condominium unit owners or cooperative members to be provided with 14-days notice before votes to forego retrofitting with a fire sprinkler system;

Homeowners' Associations

- Provides a method for the revival of a homeowners' associations expired declarations of covenants; and

Automated External Defibrillators

- Provides immunity from liability under certain circumstances to community associations for damages caused by the use of an automated external defibrillator owned by the association.

This bill substantially amends the following sections of the Florida Statutes: 718.110, 718.111, 718.112, 718.503, 719.1055, 720.301, 720.302, 720.303, and 768.1325. The bill also creates the following sections of the Florida Statutes: 720.401, 720.402, 720.403, 720.404, 720.405.

II. Present Situation:**Condominium Associations**

A condominium is a form of ownership of real property regulated under ch. 718, F.S., Florida's Condominium Act (act).¹ The act "establishes a detailed scheme for the creation, sale, and operation of condominiums." A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.² A declaration is like a constitution in that it:

strictly governs the relationships among condominium units owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.³

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.⁴ A declaration of condominium may be amended as provided in the declaration. If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of two-thirds of the units.⁵

¹ Sections 718.101 and 718.102(1), F.S.

² Section 718.104(2), F.S.

³ *Neuman v. Grand View at Emerald Hills*, 861 So. 2d 494, 496-497 (Fla. 4th DCA 2003).

⁴ Section 718.104(5), F.S.

⁵ Section 718.110(1)(a), F.S.

The articles of incorporation, if a condominium association is incorporated, and the bylaws govern the operation of an association.⁶

Rental Restrictions on Condominium Units

Historically, the interests of investor owners of condominium and resident owners of condominium units have been in conflict. Investors often have sought to rent or lease their units to tenants. Resident owners have been concerned that having tenants in the condominium would have a negative impact on the quality of life in the condominium and market value of the condominium units. As a reaction to the existence of short term tenants in a condominium, some condominium associations have amended their declarations of condominium limiting the ability of unit owners to lease or rent their units.

In *Woodside Village Condominium Association, Inc., v. Jahren*, 806 So. 2d 452 (Fla. 2000), the original declaration of condominium authorized investor owners to rent their condominium units. Concerned that the use of condominium units for rentals would negatively affect property values, the association amended its declaration of condominium to restrict the use of the condominium units for rental property. The investors complained that the restrictions deprived them of lawful uses of their condominium units which were permissible at the time they purchased their units.⁷ In upholding the restrictions the Court stated:

respondents were on notice that the unique form of ownership they acquired when they purchased their units in the Woodside Village Condominium was subject to change through the amendment process, and that they would be bound by properly adopted amendments.⁸

The Court declined to state how far condominium owners can go to restrict leasing rights in the condominium units. The Court, however, invited the Legislature to make that determination by stating:

If condominium owners are to be restrained in their enactment of such lease restrictions, it is appropriate that such restraint be set out in the legislative scheme that created and regulates condominiums and condominium living.⁹

Condominium Associations and Requests for Records or Information

Chapter 718, F.S., governs condominium associations. Specifically, s. 718.111, F.S., provides the powers and duties of an association, including the maintenance, management, and operation of the condominium property. The association is responsible for maintaining its official records under s. 718.111(12), F.S.

Section 718.111(12)(e), F.S., provides that an association or its authorized agent may not be required to provide a prospective purchaser or lienholder with information about the condominium or the association other than information or documents statutorily required to be made available. The association or its authorized agent may charge a reasonable fee to the

⁶ Section 718.112(1)(a), F.S.

⁷ *Woodside Village Condominium Association, Inc., v. Jahren*, 806 So. 2d 452, 455 (Fla. 2000).

⁸ *Id.* at 461.

⁹ *Id.* at 464.

prospective purchaser, lienholder, or the current unit owner for providing a good faith response to a request for information. However, such fee may not exceed \$150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the association's response. Currently, if an association provides information in good faith that is not statutorily required to a prospective purchaser or lienholder, the person providing the information may be liable for any inaccuracies in the information.

Condominium Voting

When unit owners vote by proxy, limited proxies must be used to: waive or reduce reserve accounts for capital expenditures and deferred maintenance; amend the declaration creating the condominium; amend the bylaws or articles of incorporation; and to decide almost any other matter, including votes to reduce a condominium's financial reporting requirements.¹⁰ A limited proxy form, in contrast to a general proxy form, records how an owner has decided to vote on an issue and does not authorize a proxy holder to decide how the owner's vote will be cast.¹¹ Section 718.112(2)(d)3., F.S., contains specific provisions governing elections for condominium associations and proxies may not be used to elect board members or fill vacancies unless otherwise provided in ch. 718, F.S.

Frequently Asked Questions and Answers

The document known as "Frequently Asked Questions and Answers" is also known as the "question and answer sheet."¹² Certain developers are required to provide this document to prospective condominium unit purchasers to inform them of voting rights and unit use restrictions, including restrictions on leasing of a unit; rent or land use fees for facilities; assessments; certain court cases in which the condominium is a litigant; and membership requirements in recreational facilities including associated fees.¹³

Previously, nondevelopers were required to provide the Frequently Asked Questions and Answers document to purchasers. However, the requirement was deleted by the Legislature by s. 14, ch. 2002-27, L.O.F. The final house analysis suggested that the document was not timely updated by condominium associations or prepared in the first place.¹⁴

Cooperatives

A cooperative is a "form of ownership of real property where legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property."¹⁵ The cooperative's association may be a corporation for profit or a corporation not for profit that owns the record interest or a leasehold of the cooperative property and is responsible for its operation.¹⁶ The board of administration (board) is the board of

¹⁰ Sections 718.112(2)(b)2. and 718.111(13)(d), F.S.

¹¹ See Department of Business and Professional Regulation, *General Information About Proxies*, which are instructions for BPR Form 33-033. Revised 11/23/93.

¹² See ss. 718.504 and 718.503(1)(b)1., F.S.

¹³ Section 718.504, F.S.

¹⁴ House of Representatives, Committee on Judicial Oversight, *Final Analysis for CS/HB 843*, at 8 (June 17 2002).

¹⁵ Section 719.103(12), F.S.

¹⁶ Section 719.103(2), F.S.

directors or other representative body which is responsible for the administration of a cooperative association.¹⁷

Unless otherwise provided by the bylaws of a cooperative, the presence of a majority of the voting interests at a membership meeting constitutes a quorum.¹⁸ Decisions shall be made by the owners of a majority of the voting interests represented at a meeting at which a quorum is present unless otherwise specified in the association's bylaws or ch. 719, F.S. Although limited proxies and general proxies may be used to establish the presence of a quorum, owners that are not present may only vote by limited proxy on certain issues if they use a form that substantially conforms to a form adopted by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation (division).¹⁹ Limited proxies are allowed for votes taken to waive or reduce reserves, to waive the financial reporting requirements, or for votes taken to amend the articles of incorporation or bylaws. Proxy voting, either limited or general, may not be used in the election of board members. General proxies may be used where limited proxies are not required and, also, for nonsubstantive changes to items for which a limited proxy is given or required. These provisions regarding voting procedures for cooperatives do not apply to timeshare cooperatives.²⁰

Firesafety Requirements

The State Fire Marshall's Office is required under s. 633.0215(1), F.S., to adopt the Florida Fire Prevention Code and ss. 125.01 and 125.56, F.S., grant county government the authority to enforce the code. The Florida Fire Prevention Code incorporates by reference the National Fire Protection Association (NFPA) 1, the Fire Prevention Code, 2000 edition, and the NFPA 101, the Life Safety Code, 2000 edition, as amended.²¹ Under the Florida Fire Prevention Code, all high rise buildings are required to be retrofitted with fire sprinkler systems.²² In 2000, the State Fire Marshall adopted the Florida Fire Prevention Code by administrative rule, to be effective July 1, 2001. Under the code, condominiums and cooperatives, must be retrofitted with fire sprinkler systems by January 1, 2014, unless a change is made in the Florida Fire Prevention Code.

Homeowners' Associations

Chapter 720, F.S., provides operating procedures for homeowners' associations while protecting the rights of association members without unduly impairing the ability of such associations to perform their functions. Section 720.303(2), F.S., specifies procedures for association board meetings. A meeting of the board occurs whenever a quorum of the board gathers to conduct association business. Board meetings are open to all members, except for those meetings between the board and its attorney relating to proposed or pending litigation.

¹⁷ Section 719.103(3), F.S.

¹⁸ Section 719.106(1)(b)1., F.S.

¹⁹ Section 719.106(1)(b)2., F.S.

²⁰ Section 719.106(1)(b)2., F.S.

²¹ Rules 4A-60.003 and 4A-60.004, Fla. Admin. Code.

²² Rule 4A-60.003(2)(k), Fla. Admin. Code.

A board may not levy assessments at a meeting unless the notice of the meeting includes the nature of those assessments and a statement that the assessments will be considered at the meeting. Currently, no additional notice requirements exist for board meetings if the board is considering taking action on rules that regulate the use of parcels in the community (i.e., pets, prohibited structures, etc.).

Preservation of Covenants and Restrictions

Florida law provides a method for a homeowners' association to preserve the covenants and restrictions on land belonging to members of the association. However, no method exists for a homeowners' association to revive covenants and restrictions that have expired.

Under s. 712.02, F.S., covenants and restrictions expire after 30 years. Section 712.05, F.S., provides that covenants and restrictions may be preserved upon the approval of two-thirds of the board of directors of a homeowners' association and the filing of a notice to preserve the covenants and restrictions with a clerk of court.

Automated External Defibrillators

Each year in the U.S., sudden cardiac arrest strikes more than 350,000 people, making it the single leading cause of death. Sudden cardiac arrest is usually caused by a condition called ventricular fibrillation. This is a condition where the normal flow of electrical impulses in the heart is disturbed and the heart muscle goes into an uncoordinated electrical activity or fibrillation. Due to the unexpectedness with which sudden cardiac arrest strikes, most of its victims die before reaching a hospital. Experts warn that a victim's chances of survival decrease by 7 to 10 percent for each minute that passes without defibrillation. The victim's best chance of survival is when defibrillation occurs within 4 minutes after the cardiac arrest.²³ Few attempts at resuscitation succeed after 10 minutes have elapsed.²⁴

An automated external defibrillator (AED) administers an electric current to the heart muscle which momentarily stuns the heart and gives it an opportunity to resume a normal rhythm; a process known as defibrillation. The device's built-in computer is able to assess the patient's heart rhythm and determine whether defibrillation is needed, and will administer the appropriate level of shock. In 1996, an AED device came on the market, the manufacturer of which refers to the product as "completely automated," with a single-button design, with non-polarized electrodes, and with step-by-step voice instructions. This device, theoretically, does not administer a shock unless it detects a lethal heart rhythm. According to the American Heart Association, a victim's chance of survival is greater than 50 percent with early defibrillation.

Liability and Insurance Costs Associated with Automated External Defibrillators

Community associations that have obtained a defibrillator for on-premise use have expressed concerns relating to liability and the high cost of insurance for such devices. Part I of ch. 768, F.S., provides the state's general negligence law. Section 768.13, F.S., the Good Samaritan Act,

²³ See *Fact Sheets: Automatic External Defibrillators*, American College of Emergency Physicians, <http://www.acep.org/1,2891,0.html> (visited Feb. 9, 2004).

²⁴ See *Cardiac Arrest: AHA Recommendation*, American Heart Association, <http://www.americanheart.org/presenter.jhtml?identifier=4481> (visited Feb. 10, 2004).

provides immunity from civil liability to any persons, including those licensed to practice medicine, who gratuitously and in good faith, render emergency care or treatment either in direct response to emergency situations related to and arising out of a state of emergency which has been declared pursuant to s. 252.36, F.S., or at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment.

In 2001, the Legislature enacted s. 768.1325, F.S., the Cardiac Arrest Survival Act (act). For purposes of the act, Florida Statutes define an AED as a defibrillator device that:

- Is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act;
- Is capable of recognizing the presence or absence of ventricular fibrillation and is capable of determining whether defibrillation should be performed; and
- After determining that defibrillation should be performed, is able to deliver an electrical shock to an individual.²⁵

The act provides that any person who uses or attempts to use an AED on a victim of a perceived medical emergency,²⁶ without objection of the victim, is immune from civil liability for any harm resulting from the use or attempted use of the device. Further, any person who acquired the device is immune from liability if the harm did not result from the failure to:

- Notify the local EMS medical director of the most recent placement of the device within a reasonable period of time;
- Properly maintain and test the device; or
- Provide appropriate training to the employee or agent who used the device on the victim.²⁷

However, this immunity does not apply to a person if:

- The harm involved was caused by that person's willful or criminal misconduct, gross negligence, reckless disregard or misconduct, or a conscious, flagrant indifference to the victim's safety or rights;
- The person is a licensed or certified health professional who used the AED while acting within the scope of his or her license or certification;
- The person is a hospital, clinic, or other entity whose primary purpose is providing health care, and the harm was caused by an employee or agent of the entity;
- The person is an acquirer of the device who leased the device for compensation to a health care entity without selling the device to the entity; or
- The person is the manufacturer of the device.²⁸

Notwithstanding the immunity provisions of the Good Samaritan Act and the Cardiac Arrest Survival Act, it has been reported that some insurance companies are requiring community associations to purchase medical malpractice liability coverage in addition to a general liability

²⁵ Section 768.1325(2)(b), F.S.

²⁶ A perceived medical emergency, for purposes of the act, means circumstances where an individual's behavior leads a reasonable person to believe that the individual is experiencing a life-threatening medical condition that requires an immediate medical response relating to the heart or other cardiopulmonary function [s. 768.1325(2)(a), F.S.].

²⁷ Section 768.1325(3), F.S.

²⁸ Section 768.1325(4), F.S.

policy if the association has acquired an AED. In general, medical malpractice liability coverage is expensive and may discourage some associations from acquiring this life-saving device.

III. Effect of Proposed Changes:

The bill: revises laws providing for disclosures to prospective purchasers of condominium units; revises voting requirements to forego retrofitting a condominium or cooperative with a fire sprinkler system; provides a method to revive a declaration of covenants of a homeowners' association; provides requirements for restricting the rental rights of a condominium unit owner; and provides immunity from liability to community associations resulting from an automated external defibrillator.

Condominiums

The bill provides that a condominium association or agent that provides information that is not required by law to a prospective purchaser is not liable if the information includes a written statement that information provided is made in good faith and to the best of the ability of the agent.

The bill also requires nondeveloper sellers in addition to developer sellers of condominium units to provide prospective purchasers with a copy of a document titled "Frequently Asked Questions and Answers." The document informs prospective purchasers of voting rights and unit use restrictions, including restrictions on leasing of a unit; rent or land use fees for facilities; assessments; certain court cases in which the condominium is a litigant; and membership requirements in recreational facilities including associated fees.

The bill requires condominium associations to provide written notice to all members 14 days before a meeting of the board of the association that will consider assessments and rules regulating the use of parcels. The notice must expressly state that assessments or rules regulating the use of parcels will be considered at the meeting.

The bill provides that the only voting interests entitled to vote on reducing the funding of reserves or using the reserves for a purpose for which the reserves were not intended are the voting interests that funded the reserves. Under existing law, the limitation of the voting interests entitled to vote on issues related to reserves applies only to multicondominium associations.

The bill provides that an amendment to a declaration of condominium that restricts the rental rights of a unit owners applies only to a unit owners that consent to the restriction and to unit owners who purchase their units after the effective date of the amendment, unless expressly stated to the contrary in the amendment. An amendment to a declaration of condominium that restricts the rental rights of nonconsenting condominium unit owners to be approved by at least three-fourths of the voting interests in the association;

Firesafety

The bill authorizes voting by limited proxy on votes to forego retrofitting a condominium or cooperative with a fire sprinkler system. Existing law prohibits all forms of proxy voting for

votes to forego retrofitting a condominium or cooperative. Condominium unit owners or cooperative members must be provided with 14-days notice before votes to forego retrofitting with a fire sprinkler system. The bill also deletes a provision of existing law that requires condominium unit owners and cooperative members to provide notice to purchasers or renters of the vote to forego retrofitting.

Homeowners Association

The bill establishes a method to revive an expired declaration of covenants by a homeowners' association. Under the method, an organizing committee of at least three parcel owners must deliver a proposed revived declaration of covenants to parcel owners that are proposed to be governed by the declaration of covenants. Upon approval by a majority of the affected parcel owners the organizing committee must submit the proposed revived governing documents to the Department of Community Affairs for its review to determine whether the documents comply with applicable laws. Upon approval by the Department of Community Affairs, the declaration of covenants is effective upon recording the documents by the clerk of circuit court. The revived declaration does not have retroactive effect and takes priority with respect to parcels as of the recording date.

Community Associations

The bill provides immunity from liability under certain circumstances to community associations for damages caused by the use of an automated external defibrillator (AED) owned by the association. Additionally, the bill prohibits insurers from requiring community associations to purchase medical malpractice liability coverage for liability resulting from an AED or excluding liability resulting from an AED in a general liability insurance policy.

The bill takes effect July 1, 2004.

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 will make it more difficult for a condominium association to restrict a unit owner's rental rights.

Insurance companies may experience higher costs associated with liability exposure because of the prohibition against the exclusion of damages that result from the use of an AED from coverage under a general liability policy. Also, there may be higher costs that result from an association not having to purchase medical malpractice liability coverage. However, at least one insurance company has indicated that liability exposure is even higher for public access sites that do not have an AED on the premises to treat sudden cardiac arrest.

The associations affected by the bill may experience a reduction in the cost of insurance because the bill prohibits insurers from requiring the associations to purchase medical malpractice liability coverage in addition to a general liability policy. Also, these associations may experience a reduction in liability exposure because of this prohibition against excluding certain damages from coverage under a general liability policy.

The bill eases the ability of condominium unit owners and cooperative members to forgo retrofitting condominiums or cooperatives with a fire sprinkler system.

The property value of parcels in a homeowners' association will likely be affected by the revival of a declaration of covenants.

C. Government Sector Impact:

The Department of Community Affairs will likely incur costs to review documents attempting to revive an expired declarations of covenants from homeowners' associations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.