

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1507 w/CS Condominiums  
**SPONSOR(S):** Evers  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 298

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	14 Y, 0 N w/CS	Jaroslav	Havlicak
2)			
3)			
4)			
5)			

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**SUMMARY ANALYSIS**

Current law provides that condominium unit owners gradually acquire a greater percentage of the directorships on a condominium association's board from the developer as units are sold. This bill provides that actions taken by board members appointed by the developer are considered actions of the developer, and the developer is responsible to the association and its members for all such actions.

Current law does not require that any specific procedure be followed before a condominium association may bring a lawsuit. This bill provides that in any suit against a developer by an association alleging a defect in design, structural elements, construction, or any mechanical, electrical, fire protection, plumbing, or other element that requires a licensed professional for design or installation under chs. 455 (general regulation of businesses and professions), 471 (engineering), 481 (architecture, interior design and landscape architecture), 489 (contracting), or 633, F.S. (fire prevention and control), such defect must be examined and certified by the same type of licensed professional.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1507a.ju.doc  
**DATE:** April 2, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |  |   |
|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Because this bill requires plaintiffs to take additional actions before or during suit, it could be described as reducing individual freedom.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation: Transfer of Association Control**

Section 718.301, F.S., provides that condominium unit owners gradually acquire a greater percentage of the directorships on a condominium association's board from the developer as units are sold. Under s. 718.301(1), F.S., in pertinent part:

Unit owners other than the developer are entitled to elect not less than a majority of the members of the board of administration of an association:

- (a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;
- (b) Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;
- (c) When all the units that will be operated ultimately by the association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business;
- (d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business; or
- (e) Seven years after recordation of the declaration of condominium; or, in the case of an association which may ultimately operate more than one condominium, 7 years after recordation of the declaration for the first condominium it operates; or, in the case of an association operating a phase condominium created pursuant to s. 718.403, 7 years after recordation of the declaration creating the initial phase, whichever occurs first.

Pursuant to s. 718.301(4), F.S., when the unit owners obtain a majority of the seats on a condominium association's board, the unit owners assume control of the association from the developer. Section 718.301(5), F.S., provides that until the developer relinquishes control of the association, it is liable to third parties for any violation of ch. 718, F.S., the Condominium Act, or rules implementing it.

## Proposed Changes

This bill amends s. 718.301, F.S., to provide that actions taken by board members appointed by the developer are considered actions of the developer, and the developer is responsible to the association and its members for all such actions.

## Present Situation: Suits for Defects/Licensed Professionals

Current law does not require that any specific procedure be followed before a condominium association may bring a lawsuit.

## Proposed Changes

This bill amend s. 718.301, F.S., to provide that in any suit against a developer by an association alleging a defect in design, structural elements, construction, or any mechanical, electrical, fire protection, plumbing, or other element that requires a licensed professional for design or installation under chs. 455 (general regulation of businesses and professions), 471 (engineering), 481 (architecture, interior design and landscape architecture), 489 (contracting), or 633, F.S. (fire prevention and control), such defect must be examined and certified by the same type of licensed professional.

### C. SECTION DIRECTORY:

**Section 1.** Amends s. 718.301, F.S., relating to transfer of condominium association control and claims of defect by a condominium association.

**Section 2.** Provides an effective date of July 1, 2004.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill could require greater expenditures on licensed professionals by condominium associations; this could, in turn, provide a greater volume of business for such professionals.

### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 30, 2004, the House Committee on Judiciary adopted one amendment to this bill. The amendment eliminated provisions of the bill as originally drafted which would have required approval of many condominium association suits by a majority of non-developer unit owners after being presented with an extensive form "Litigation Disclosure Notice," and would have eliminated causes of action against developers for reasonable reliance on false or misleading oral representations or information in promotional materials. The amendment also provided that in any suit against a developer by an association alleging a defect in design, structural elements, construction, or any mechanical, electrical, fire protection, plumbing, or other element that requires a licensed professional for design or installation under chs. 455 (general regulation of businesses and professions), 471 (engineering), 481 (architecture, interior design and landscape architecture), 489 (contracting), or 633, F.S. (fire prevention and control), such defect must be examined and certified by the same type of licensed professional. The Committee then reported this bill favorably with a committee substitute.

This analysis is drafted to the bill as amended.