

# 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.)

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Prepared By: Regulated Industries Committee

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BILL: CS/SB 1492

SPONSOR: Committee on Regulated Industries and Senator Clary

SUBJECT: Condominiums

DATE: April 12, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The committee substitute creates s. 718.301(6), F.S., to provide that prior to the developer relinquishing control of the condominium association, any actions taken by members of the board of administration designated by the developer are considered actions taken by the developer, and the developer is responsible to the association and its members for all such actions.

The committee substitute creates s. 718.301(7), F.S., to provide that any claim 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, 471, 481, 489, or 633, F.S., such defect must be examined and certified by an appropriately licensed Florida engineer, design professional, contractor, or otherwise licensed Florida individual or entity.

This committee substitute substantially amends s. 718.301, Florida Statutes.

## II. Present Situation:

Section 718.301(5), F.S., provides that prior to the time the developer relinquishes control of the association, the developer is responsible for any violations of the Condominium Act or any rule promulgated thereunder.

Section 718.111(3), F.S., provides that after the control of the association is obtained by unit owners other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all unit owners concerning matters of common interest to most or all unit owners, including, but not limited to, the common elements; the roof and

structural components of a building or other improvements; or mechanical, electrical, and plumbing elements serving an improvement or a building.

### **III. Effect of Proposed Changes:**

The committee substitute creates s. 718.301(6), F.S., to provide that prior to the developer relinquishing control of the association pursuant to subsection (4), actions taken by members of the board of administration designated by the developer are considered actions taken by the developer, and the developer is responsible to the association and its members for all such actions.

The committee substitute creates s. 718.301(7), F.S., to provide that any claim 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 (Business and Professional Regulation), 471 (Engineering), 481 (Architecture, Interior Design, and Landscape Architecture), 489 (Contracting), or 633 (Fire Prevention and Control), F.S., such defect must be examined and certified by an appropriately licensed Florida engineer, design professional, contractor, or otherwise licensed Florida individual or entity.

The committee substitute provides an effective date of July 1, 2005.

The Department of Business and Professional Regulation states that under general corporate law, board members act on behalf of the corporation they are serving, not on behalf of the developer. By providing that developer-designated board members are not required to act on behalf of the association, the bill may impact the fiduciary duty of board members created by s. 718.111(1)(a), F.S. The department points out that s. 718.301(5), F.S., appears to make the developer, and not the association, liable for those portions of the statute.

### **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:

None.

C. Government Sector Impact:

The Department of Business and Professional Regulation states that the bill could result in an indeterminable increase in the number of complaints that allege developer liability for actions taken by developer designated board members.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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## **VIII. Summary of Amendments:**

None.

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