

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility—This bill requires a condominium association to have an alleged defect examined and certified as a defect by a licensed professional when making a claim against the condominium developer for the alleged defect.

B. EFFECT OF PROPOSED CHANGES:

Transfer of Association Control

Chapter 718, F.S., governs condominium associations. Part III of chapter 718, ss. 718.301-718.303, F.S., provides for the rights and obligations of an association. Section 718.301, F.S., allows condominium unit owners to 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., unit owners, other than the developer, that own 15 percent or more of the units in a condominium that is to be operated ultimately by the association are entitled to elect not less than one-third of a board's members. 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.

Under s. 718.301(4), F.S., once 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, the developer is responsible for any violation by the association of ch. 718, F.S., the Condominium Act, or rules implementing the act, and is liable to third parties for any such violation. Section 718.303(1)(c), F.S., provides that an association or unit owner may bring an action for damages, or for injunctive relief, or for both, for a violation of this chapter against "[d]irectors designated by the developer, for actions taken by them prior to the time control of the association is assumed by unit owners other than the developer."

Claims by an Association Against a Developer

An action to compel compliance with the provisions of s. 718.301, F.S., *may* be brought under the summary procedure provided for in s. 51.011, F.S. In any such action, the prevailing party is entitled to recover reasonable attorney's fees.¹ The summary procedure includes requirements for the pleadings of the parties, discovery, jury trial, the procedure for requesting a new trial, and how much time is allowed for an appeal to be filed.²

Current law does not require a particular procedure for an association to follow when making a claim against a developer alleging a defect. When a developer turns over control to an association, the association will receive certain information from the developer, including information about the construction of the condominium. The developer must turn over to the association, among other things:

A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the condominium and in the construction and installation of all mechanical components serving the improvements and the site with a certificate in affidavit form of the developer or the developer's agent or an architect or engineer authorized to practice in this state that such plans and specifications represent, to the best of his or her knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the condominium property and for the construction and installation of the mechanical components serving the improvements.

A list of the names and addresses, of which the developer had knowledge at any time in the development of the condominium, of all contractors, subcontractors, and suppliers utilized in the construction or remodeling of the improvements and in the landscaping of the condominium or association property.³

Further, a developer must provide to the purchaser of a condominium implied warranties of fitness and merchantability for the purposes or uses intended as follows:

(a) As to each unit, a warranty for 3 years commencing with the completion of the building containing the unit.

(b) As to the personal property that is transferred with, or appurtenant to, each unit, a warranty which is for the same period as that provided by the manufacturer of the personal property, commencing with the date of closing of the purchase or the date of possession of the unit, whichever is earlier.

(c) As to all other improvements for the use of unit owners, a 3-year warranty commencing with the date of completion of the improvements.

(d) As to all other personal property for the use of unit owners, a warranty which shall be the same as that provided by the manufacturer of the personal property.

(e) As to the roof and structural components of a building or other improvements and as to mechanical, electrical, and plumbing elements serving improvements or a building, except mechanical elements serving only one unit, a warranty for a period beginning with the completion of construction of each building or improvement and continuing for 3 years thereafter or 1 year after owners other than the developer obtain control of the association, whichever occurs last, but in no event more than 5 years.

¹ Section 718.302(6), F.S.

² Section 51.011(1)-(5), F.S.

³ Section 718.301(4)(f) and (g), F.S.

(f) As to all other property which is conveyed with a unit, a warranty to the initial purchaser of each unit for a period of 1 year from the date of closing of the purchase or the date of possession, whichever occurs first.

The warranties are conditioned upon routine maintenance being performed, unless the maintenance is an obligation of the developer or a developer-controlled association.⁴

This bill amends s. 718.301, F.S., to add that prior to the developer relinquishing control of the association pursuant to the procedures outlined in subsection (4) of s. 718.301, F.S., actions taken by members of the board of administration for a condominium association designated by the developer are considered actions taken by the developer, and the developer is responsible to the association for those actions. This change expands what a developer may be held responsible for from violations made by a developer appointed board to also include any "actions" made by the board. Additionally the bill provides that in any claim by an association against a developer alleging a defect in design, structural elements, construction, or any mechanical, electrical, fire protection, plumbing or other element that require a licensed professional for design or installation under chapter 455, chapter 471 (Engineering), chapter 481 (Architecture), chapter 489 (Contracting), or chapter 633 (Fire prevention and control), the defect must be examined and certified by the appropriately licensed professional.

The bill provides that it takes effect July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Amends section 718.301, Florida Statutes, to add new subsections (6) and (7). These new sections provide that 1) 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; and 2) in 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 chapter 455, chapter 471 (Engineering), chapter 481 (Architecture), chapter 489 (Contracting), or chapter 633 (Fire prevention and control), such defects must be examined and certified by an appropriately licensed Florida engineer, design professional, contractor, or otherwise licensed Florida individual or entity.

Section 2. Establishes an effective date of July 1, 2005.

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.

⁴ Section 718.203(4), F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the bill passes, certain licensed professionals may be hired to examine and certify alleged defects.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, nor does it reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor does it reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None; the rule-making referenced in the bill is already included in the current law. The subsection is just renumbered.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

This bill was heard by the Committee on Civil Justice on February 23, 2005, and was reported favorably by the Committee with one amendment. The amendment clarifies that a developer is responsible for actions taken by a board appointed by the developer until the developer relinquishes control of the board to the association.