

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.)

Prepared By: Regulated Industries Committee

BILL: CS/SB 948

SPONSOR: Regulated Industries Committee and Senator Jones

SUBJECT: Condominiums

DATE: April 25, 2005

REVISED: _____

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

I. Summary:

The Committee Substitute (CS) directs the Advisory Council on Condominiums to hold public hearings, study available options and proposals and prepare a report to the Legislature that includes recommended legislation dealing with protection and preservation of condominium property during anticipated catastrophic windstorm events and the recovery and rebuilding following such events.

It provides that a fine by a homeowner's association against a member may not become a lien on a homeowner's parcel unless it's imposed for violations of use restrictions on the land.

It amends mediation provisions relating to proceedings between a homeowner and homeowner's association.

It deletes a provision that funded education programs to assist homeowners, associations, board members, and managers in understanding homeowners' associations and the use of alternative dispute resolution.

It creates a section to permit voluntary homeowners' associations to revive extinguished declarations of covenants and restrictions.

II. Present Situation:

Advisory Council on Condominiums

In 2004, the Legislature created the Advisory Council on Condominiums.¹ The Advisory Council on Condominiums has seven appointed members, two members appointed by the President of the Senate, two members appointed by the Speaker of the House of Representatives, and three members appointed by the Governor. At least one member that is appointed by the Governor must represent timeshare condominiums. Members are appointed to two year terms.

The Advisory Council is required to:

- Receive input from the public regarding issues concerning condominiums and recommendations for changes in the condominium law;
- Review, evaluate, and advise the division concerning revisions and adoption of rules affecting condominiums;
- Recommend improvements, if needed, in the education programs offered by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation.²

The council may meet at the call of its chair, at the request of a majority of its membership, at the request of the division, or at such times as it may prescribe. A majority of the members of the council constitutes a quorum. Council action may be taken by vote of a majority of the voting members who are present at a meeting where there is a quorum.³

Condominium Associations

Emergency Powers: The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation (DBPR) oversees compliance by condominium associations with ch. 718, F.S., which governs condominium associations. According to DBPR, many condominium associations have had to address emergency operations issues this past year due to the high number of hurricanes that impacted the state.⁴ In general, the law does not set forth condominium association emergency powers in a catastrophic event.

Association Powers and Operation: The powers of a condominium association include the power to enter into agreements, to acquire leaseholds, memberships, and other possessory or use

¹ Chapter 2004 -345, L.O.F.

² Section 718.5015(2), F.S.

³ Section 718.5015(3), F.S.

⁴ Hurricane Charley made landfall in Florida on August 13, 2004 as a category 4 hurricane with 145 mph winds. Hurricane Frances made landfall in Florida on September 5, 2004 as a category 2 hurricane with 105 mph winds. Hurricane Ivan made landfall in Florida on September 16, 2004 as a category 3 hurricane with 130 mph winds. Hurricane Jeanne made landfall in Florida on September 26, 2004 as a category 3 hurricane with 120 mph winds. (Information from National Weather Service Tropical Prediction Center National Hurricane Center -http://www.nhc.noaa.gov/archive/2004/tws/MIATWSAT_nov.shtml?)

interests in lands or facilities.⁵ The association has this power “whether or not the lands or facilities are contiguous to the lands of the condominium, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners.”⁶ Generally, the operation of an association is governed by the articles of incorporation and the bylaws of the association.⁷

Contracts for Products and Services: Section 718.3026, F.S., provides that most contracts entered into by an association, particularly any contracts for the provisions of services, must be in writing. This section also requires an association to obtain a competitive bid if a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment in the aggregate that exceeds 5 percent of the total annual budget of the association, including reserves. This section also provides that the association is not required to accept the lowest bid. However, contracts with employees of the association, and contracts for attorney, accountant, architect, community association manager, timeshare management firm, engineering, and landscape architect services are exempt from the bidding requirement. This section also states that “[n]othing contained herein is intended to limit the ability of an association to obtain needed products and services in an emergency.”⁸

Assessments: If an association imposes a special assessment, the specific purpose must be put in writing and be delivered to each unit owner.⁹ Any funds collected from special assessments may only be used for the specific purpose set out in the notice.¹⁰ Any excess funds remaining are considered common surplus, and may, at the discretion of the board, either be returned to the unit owners or applied as a credit toward future assessments.¹¹

Association Bylaws: A condominium association’s bylaws usually spell out the specific responsibilities of an association. Section 718.112(2), F.S., provides items that must be included in an association’s bylaws, and provides that if the items are not included, the bylaws are deemed to include those items. Among some of those items are the following:

- Appointment – This section provides that the powers, duties and the appointment of a condominium board must be provided for in the bylaws. This section also states that “[u]nless prohibited in the bylaws, the board...may appoint other officers and grant them the duties it deems appropriate.”¹²
- Board Meeting – A board meeting notice must include an agenda and must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. However, written notice of any meeting at which nonemergency special assessments, or at which amendment to rules regarding unit use, will be considered shall be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the

⁵ Section 718.114, F.S.

⁶ *Id.*

⁷ Section 718.112(1)(a), F.S.

⁸ Section 718.3026(2)(b), F.S.

⁹ Section 718.116(10), F.S.

¹⁰ *Id.*

¹¹ Section 718.116, F.S.

¹² Section 718.112(2)(a)1., F.S.

condominium property not less than 14 days prior to the meeting. If there is no condominium property or association property upon which notices can be posted, notices of board meetings shall be mailed, delivered, or electronically transmitted at least 14 days before the meeting to the owner of each unit.¹³

- Unit Owners Meetings – A written notice for a unit owners meeting, including an annual meeting, must include an agenda, and must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days prior to the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days before the annual meeting.¹⁴
- Assessments – The bylaws must also provide for the manner of collecting assessments from the unit owners, and such assessments must be made not less frequently than quarterly.¹⁵
- Optional Provisions – The bylaws may also include:
 - A method of adopting and amending administrative rules and regulations governing the details of the operation and use of the common elements.
 - Restrictions on and requirements for the use, maintenance, and appearance of the units and the use of the common elements.
 - Provisions for giving notice by electronic transmission in a manner authorized by law of meetings of the board of directors and committees and of annual and special meetings of the members.
 - Other provisions which are not inconsistent with this chapter or with the declaration, as may be desired.¹⁶

Homeowners' Associations

Liens: Section 720.305, F.S., establishes, among other things, the power of a homeowner's association to levy fines against a member for failure to follow the homeowner's association's rules. The homeowner's association may suspend, for a reasonable period of time, the rights of a member or their guests, or both, to use common areas and facilities, and may levy reasonable fines not greater than \$100 per violation against any member or their guests.¹⁷ This section provides that "a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$1,000 in the aggregate unless otherwise provided in the governing documents."¹⁸ This section also provides that a fine may not become a lien against a parcel.¹⁹ Additionally, this section provides for notice of at least 14 days to the person sought to be fined or suspended.²⁰ Such person is provided an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or a relation of an officer, director, or employee.²¹ A majority vote is necessary to impose a fine or suspension.²²

¹³ Section 718.112(2)(c), F.S.

¹⁴ Section 718.112(2)(d)2., F.S.

¹⁵ Section 718.112(2)(g), F.S.

¹⁶ Section 718.112(3), F.S.

¹⁷ Section 720.305(2), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Alternative Dispute Resolution: Section 720.311(2)(a), F.S., requires that disputes between a homeowner's association and a parcel owner regarding use of or changes to the parcel or the common areas and other covenant enforcement disputes, disputes regarding amendments to the homeowner's association documents, disputes regarding meetings of the board and committees appointed by the board, membership meetings not including election meetings, and access to the official records of the association must be filed with the DBPR for mandatory mediation before the dispute is filed in court.²³ This section also provides that if mediation is not successful in resolving all issues between the parties, the parties may proceed to court or elect to enter into binding or nonbinding arbitration. If all parties do not agree to arbitration proceedings following an unsuccessful mediation, any party may file the dispute in court. A final order resulting from nonbinding arbitration is final and enforceable if a complaint for a trial is not filed in court within 30 days after entry of the order.²⁴

DBPR is responsible for developing a certification and training program for private mediators and private arbitrators.²⁵ A mediator or arbitrator may be certified by DBPR if he or she has:

- Attended at least 20 hours of training in mediation or arbitration, as appropriate;
- Has mediated or arbitrated at least 10 disputes involving community associations within 5 years prior to the date of the application, or has mediated or arbitrated 10 disputes in any area within 5 years prior to the date of application; and
- Has completed 20 hours of training in community association disputes.²⁶

Any mediator must also be certified by the Florida Supreme Court.²⁷ The expenses of operating the training and certification and training program shall be paid by the moneys and filing fees generated by the arbitration of recall and election disputes and by the mediation of those disputes and by the training fees.²⁸

Section 712.02, F.S., provides that:

Any person having the legal capacity to own land in this state, who, alone or together with her or his predecessors in title, has been vested with any estate in land of record for 30 years or more, shall have a marketable record title to such estate in said land, which shall be free and clear of all claims except the matters set forth as exceptions to marketability in s. 712.03.

This law had the effect of extinguishing covenants and restrictions of some condominium associations who had filed covenants and restrictions over 30 years ago. According to proponents of the bill, once this problem was exposed, steps were taken through legislative initiatives in 2002 and 2003 to provide mechanisms to allow planned communities whose covenants were nearing extinguishment age, but not yet extinguished, to extend the term of those covenants and

²³ Section 720.311(2)(a), F.S.

²⁴ Section 720.311(2)(b), F.S.

²⁵ Section 720.311(2)(c), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

restrictions.²⁹ Additional legislative fixes included mandatory homeowners' associations whose covenants and restrictions had been extinguished, but apparently did not include voluntary homeowners' associations whose covenants and restrictions were extinguished by ch. 712, F.S.

To revive a declaration of covenants, parcel owners in a community may seek approval from the Department of Community Affairs (DCA) once all of the following requirements are met:

- (1) All parcels to be governed by the revived declaration must have been once governed by a previous declaration that has ceased to govern some or all of the parcels in the community;
- (2) The revived declaration must be approved in the manner provided in s. 720.405(6), F.S., and
- (3) The revived declaration may not contain covenants that are more restrictive on the parcel owners than the covenants contained in the previous declaration, except that the declaration may:
 - (a) Have an effective term of longer duration than the term of the previous declaration;
 - (b) Omit restrictions contained in the previous declaration;
 - (c) Govern fewer than all of the parcels governed by the previous declaration;
 - (d) Provide for amendments to the declaration and other governing documents; and
 - (e) Contain provisions required by this chapter for new declarations that were not contained in the previous declaration.³⁰

After a community has formed an organizing committee to draft or obtain the correct documents to revive extinguished covenants, "a majority of the affected parcel owners must agree in writing to the revived declaration of covenants and governing documents of the homeowners' association or approve the revived declaration and governing documents by a vote at a meeting of the affected parcel owners noticed and conducted in the manner prescribed by s. 720.306."³¹

Within 60 days of the parcel owners' approval, the organizing committee must submit the documents to the DCA. The DCA must make a determination within 60 days of submittal that either the documents comply or do not comply with the requirements of the statute, and then so inform the community.³²

No later than 30 days after receiving approval from the department, the organizing committee must file the articles of incorporation of the association with the Division of Corporations of the Department of State, if the articles have not been previously filed with the division. No later than 30 days after receiving approval from the division, the president and secretary of the association must execute the revived declaration and other governing documents approved by the department in the name of the association and have the documents recorded with the clerk of the circuit court in the county where the affected parcels are located.³³

²⁹ Explanation paper for HB 1593 (on file with the Civil Justice Committee).

³⁰ Section 720.404, F.S.

³¹ Section 720.405(6), F.S.

³² Section 720.406(1) and (2), F.S.

³³ Section 720.407(1) and (2), F.S.

III. Effect of Proposed Changes:

Section 1. The CS directs the Advisory Council on Condominiums to hold public hearings, study available options and proposals and prepare a report to the Legislature that includes recommended legislation dealing with protection and preservation of condominium property during anticipated catastrophic windstorm events and the recovery and rebuilding following such events. It provides that recommendations should consider:

- The communication options with condominium owners in times of anticipated and declared emergencies;
- Financial planning for protection and rebuilding condominium property following such events; and
- The powers and responsibilities of unit owners and the board of directors of the condominium association before, during, and after such occurrences.

Section 2. The CS amends s. 720.305, F.S., to provide that a fine by a homeowner's association against a member may not become a lien on a homeowner's parcel unless it's imposed for violations of use restrictions on the land.

Section 3. The CS amends s. 720.311, F.S., to provide that the failure of any party to make payment of fees and costs within the time established by department rule or to appear for a scheduled mediation session or arbitration proceeding shall operate as an impasse in the proceeding between the parties, entitling the other party to proceed in court and to receive and enforce an award of costs and fees associated with the mediation or arbitration.

It provides that a mediator or arbitrator shall be certified only if they have met the qualifications for a mediator established for circuit court mediators. It deletes the requirements of 20 hours of training in mediation or arbitration and experience requirements.

It deletes the provision that funded education programs to assist homeowners, associations, board members, and managers in understanding homeowners' associations and the use of alternative dispute resolution.

Section 4. The CS creates s. 712.11, F.S. to permit voluntary homeowners' associations to revive declarations of covenants and restrictions extinguished by the Marketable Record Titles to Real Property Act, by utilizing the procedures in part III, ch. 720, F.S.

Section 5. The CS provides that the act shall take effect upon becoming law.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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