



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill adds additional responsibilities for the Advisory Council on Condominiums.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Advisory Council on Condominiums

In 2004, the Legislature created the Advisory Council on Condominiums, in part to receive public input regarding issues of concern with respect to condominiums and recommendations for changes in the condominium law.<sup>1</sup> The issues the council is required to consider include, but are not limited to, the rights and responsibilities of the unit owners in relation to the rights and responsibilities of the association.<sup>2</sup> The council is also charged with recommending necessary improvements to the education programs offered by the Division of Florida Land Sales, Condominiums, and Mobile Homes and reviewing, evaluating, and advising the division about revisions and adoption of rules affecting condominiums.<sup>3</sup> The council is administratively assigned to the division within the Department of Business and Professional Regulation (DBPR).<sup>4</sup> The members of the council serve on a voluntary basis, but are entitled to receive per diem and travel expenses while on official business.<sup>5</sup>

##### The Roth Act

In 1980, the Legislature enacted Part VI of the Condominium Act (ch. 718, F.S.), also known as the Roth Act, which addresses condominium conversions.<sup>6</sup> The Roth Act is the result of a detailed report prepared by James S. Roth, the Director of what was formerly known as the Department of Professional Regulation, Division of Florida Land Sales and Condominiums. The Roth Report recommended that legislation be enacted to provide sufficient time and information so that tenants could make informed decisions about conversion of their rental facilities and protections to purchasing and nonpurchasing tenants.<sup>7</sup>

Part VI of the Condominium Act is devoted exclusively to condominiums which are created when existing improvements are converted to a residential condominium. This part of the Act provides protections to the existing renters in the building and to prospective purchasers of the converted condominium units. Renters are entitled to written notice of the proposed conversion and an option to extend their current lease. Each tenant has the right of first refusal to purchase the unit and the developer must provide basic background information to assist each tenant in evaluating the potential purchase.<sup>8</sup>

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<sup>1</sup> Section 5, ch. 2004-345, L.O.F.

<sup>2</sup> Section 718.50151(2)(a), F.S.

<sup>3</sup> Section 718.50151(2)(b) and (c), F.S.

<sup>4</sup> Section 718.50151(1), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 1, ch. 80-3, L.O.F.

<sup>7</sup> *Florida Condominium Law and Practice*, 3d ed., s. 9.1 (The Florida Bar, 2003).

<sup>8</sup> Peter M. Dunbar, *The Condominium Concept, A Practical Guide for Officers, Owners and Directors of Florida Condominiums*, 8th ed., s. 2.7, 33-34 (Aras Publishing 2003).

Section 718.616, F.S., requires each developer of a residential condominium to provide to new prospective purchasers and the ultimate owners of converted condominium units the same basic disclosures that are required in all condominium developments.<sup>9</sup> The developer must disclose the following information concerning the improvements:

- Date and type of construction;
- Prior use;
- Existence of any termite damage or infestation and whether it has been treated properly. A report from a certified pest control operator must substantiate the inspection.

The developer must also disclose the condition for each of the components listed in s. 718.616(3)(a), F.S. The components include the roof, structure, fireproofing and fire protection systems, elevators, heating and cooling systems, plumbing, electrical systems, swimming pools, seawalls, pavement and parking areas, and drainage systems. The developer must also disclose the components age, estimated remaining useful life, estimated current replacement cost, and structural and functional soundness.<sup>10</sup> The disclosure must be substantiated by attaching a copy of a certificate by a Florida licensed architect or engineer under seal.<sup>11</sup>

The developer is not required to certify that the replacement or renewal meets the requirements of the then-applicable building code. However, for purposes of funding a reserve account, this certification is required. The estimated current replacement cost of the component must be given as a total amount and as a per-unit amount based on each unit's proportional share of the common expenses.<sup>12</sup>

If the proposed condominium is situated within a municipality, the disclosure must include a letter from the municipality that acknowledges that it has been notified of the proposed conversion.<sup>13</sup>

Section 718.618, F.S., requires that once a conversion has taken place, the developer has to create financial safeguards for the condominiums. The developer must either: (1) establish reserve accounts for capital expenditures and deferred maintenance; (2) give implied warranties of fitness and merchantability for a period of three years beginning with the notice of intended conversion and continuing for three years, or the recording of the declaration to condominium and continuing for three years, or one year after owners other than the developer obtain control of the association, whichever occurs later; or (3) post a surety bond in an amount which would be equal to the total amount of all required reserve accounts payable to the association.<sup>14</sup>

A recent article on condominium conversions identified several issues regarding the conversion process.<sup>15</sup> The article maintained that the current statutory law offered little protection for consumers and required limited accountability for developers. The article noted that once the condominium association assumes control over the converted condominium, it may face hidden structural problems and problems regarding the reserve accounts. Another criticism identified was that the corporations created for the conversion may be limited liability companies with little assets to be attached when problems arise after the conversion.<sup>16</sup>

Compliance with s. 718.618, F.S., does not shield the developer from all liability in connection with the components involved. The statute does not foreclose other legal actions based upon negligence, misrepresentation, strict liability, or similar liability actions.<sup>17</sup>

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<sup>9</sup> Section 718.616, F.S.; Rule 61B-24.004(1)(a), F.A.C.

<sup>10</sup> Section 718.616(3)(b), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 718.616(3)(b)3., F.S.

<sup>13</sup> Section 718.616(4), F.S.

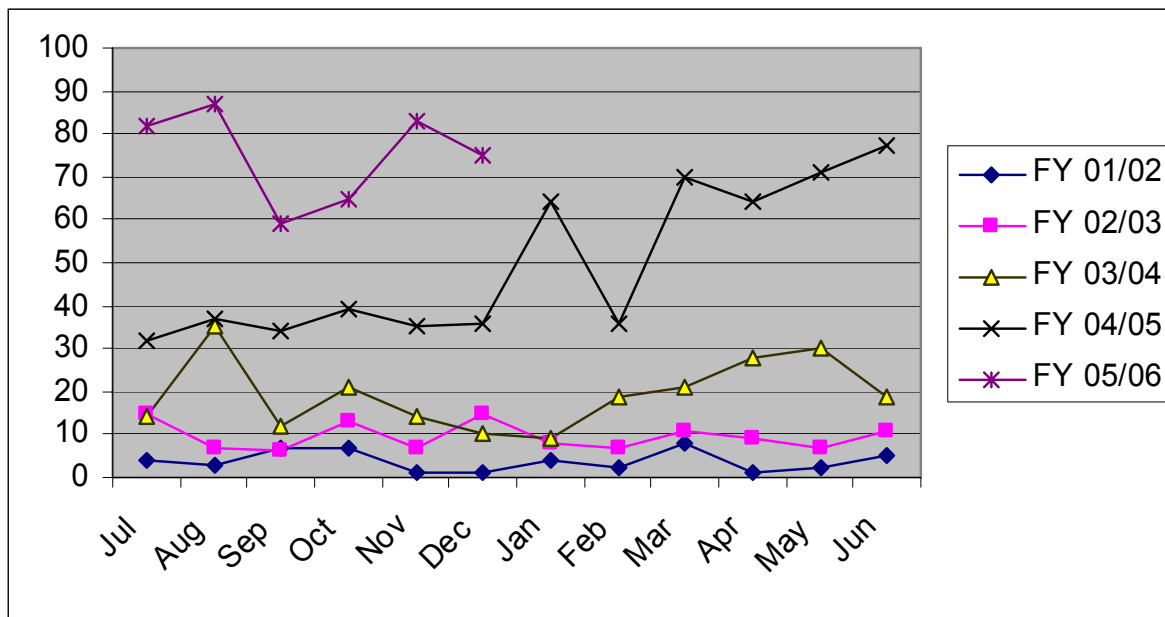
<sup>14</sup> Section 718.618, F.S.

<sup>15</sup> Paola Iuspa-Abbott, "Condo Conversion Blues," *Daily Business Review*, 15 Aug. 2005, A8.

<sup>16</sup> *Id.*

<sup>17</sup> *Supra* at note 8, s. 9.50.

The Division of Florida Land Sales, Condominiums, and Mobile Homes in the Department of Business and Professional Regulation indicated the number of conversions in the table below.



### Effect of Bill

The bill directs the Advisory Council on Condominiums to review part VI of ch. 718, F.S., concerning condominium conversions. The bill requires the council to submit a report to the Legislature by November 30, 2006. The report must evaluate whether such provisions provide adequate post-purchase protection for purchasers of condominium conversion properties and recommend any proposed legislation needed to improve the protection provided by part VI of ch. 718, F.S.

In particular, the bill requires that the report examine ss. 718.616 and 718.618, F.S., as they relate to:

- Whether the disclosures required by s. 718.616, F.S., provide adequate information to the purchaser; whether more specific guidelines regarding the contents of the reports should be established; and whether the creation of privity or potential liability between persons who certify such disclosure reports and the unit owners should be addressed; and
- Whether the provisions of s. 718.618, F.S., which require developers to fund reserve accounts or alternatives to such accounts, are adequate or should be modified.

### C. SECTION DIRECTORY:

Section 1 requires the Advisory Council on Condominiums to review certain provisions related to protections of condominium conversions, and requiring a report to the Legislature.

Section 2 provides that the bill is effective upon becoming a law.

## 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:

None.

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, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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 & COMBINED BILL CHANGES**

N/A