

The Florida Senate
PROFESSIONAL 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: Community Affairs Committee

BILL: CS/CS/SB 2816

INTRODUCER: Community Affairs Committee, Regulated Industries Committee, and Senator Villalobos

SUBJECT: Community Associations

DATE: April 24, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	Fav/CS
2.	Molloy	Yeatman	CA	Fav/CS
3.			JU	
4.			GA	
5.				
6.				

I. Summary:

The bill makes numerous changes to regulations for condominium associations and homeowner associations.

The bill substantially amends the following sections of the Florida Statutes: 718.104, 718.110, 718.111, 718.112, 718.113, 718.1255, 718.302, 718.3025, 718.3026, 718.303, 718.404, 718.501, 718.5011, 718.5012, 718.504, 720.303, 720.307, 720.3075.

The bill creates sections 718.1224 and 718.1257 of the Florida Statutes.

II. Present Situation:

Chapter 718, Florida Statutes, the Condominium Act (act) is a comprehensive statute that regulates residential condominium living throughout the state. The act contains myriad regulations dealing with condominium elections, finances, communication with unit owners, repair and maintenance, and meetings of the condominium’s governing board which is elected from among the condominium’s unit owners. Currently, there are 3 million unit owners spread among 20,000 condominium associations across the state with approximately 70 percent of these associations located in Palm Beach, Broward, Miami-Dade, and Monroe counties.

The Department of Business and Professional Regulation’s Florida Division of Land Sales, Condominiums and Mobile Homes (division) is charged with carrying out this regulatory responsibility under the provisions of the act. The division’s mission is to provide consumer protection to condominium residents through education, developer disclosure, enforcement, and alternative dispute resolution.

Chapter 720, F.S., generally describes how homeowner associations (HOA's) organize and operate themselves. Although the division provides alternative dispute resolution services for residents of HOA's, no state agency is responsible for regulating HOA's. Chapter 720, F.S., specifically provides that it is the legislature's intent that HOA's not be regulated.

Section 718.50151, F.S., establishes the Condominium Advisory Council and generally authorizes the council to gather public input regarding condominium living and advise the division. Since its inception the council has conducted numerous public meetings and received the testimony of hundreds of condominium unit owners.

Sections 718.5011 and 718.5012, F.S., establish the office of the Condominium Ombudsman who is appointed by the Governor and serves at the pleasure of the Governor. The principle role of the Ombudsman is to act as a neutral liaison between the division and unit owners in resolving condominium unit owner issues and to provide election monitoring services to condominium associations. Under the current law, the Ombudsman does not "enforce" any provisions of the act, but can recommend that the division take enforcement action with respect to condominium problems encountered or reported to the Ombudsman's office.

At the present time, there is no advisory council for HOA's comparable to the Condominium Advisory Council.

Chapter 190, F. S., provides for the creation and operation of Community Development Districts (CDD's). However, by law a CDD is a special purpose unit of local government that is not regulated by the Department of Business and Professional Regulation.

III. Effect of Proposed Changes:

Section 1 amends s. 718.105(4)(c), F.S., relating to the creation of condominiums, to provide that, for condominiums created after April 1, 2007, the ownership share of the common elements, and proportion of sharing expenses must be based solely on the relative size of the unit in relation to the total size of each other unit in the condominium. Under the current law, the proportionate share of condominium ownership must either be equal fractional shares or based on the relative size of the units.

Section 2 amends s. 718.110(1), F.S., relating to amendments of declaration, to require that notice of proposed amendments to the declaration of condominium be provided to unit owners by certified mail.

Section 3 amends s. 718.111, F.S., relating to associations, as follows:

- Subsection (5) is amended to provide that, except in the case of an emergency, condominium associations must give the unit owner 24 hours advance written notice of intent to access the unit.
- Subsection (12) is amended to require that association records be made available at a location within the county in which the condominium property is located for the purpose of allowing

records access to unit owners. Social security numbers, driver's license numbers, credit card numbers, and other personal identifying information of unit owners, occupants or tenants would not be available for inspection by unit owners or their appointed representatives. The reporting requirements cannot be waived for more than two years.

- Subsection (13) is amended to delete a requirement that a unit owner must make a written request to receive a copy of the financial statement and instead provides that condominium associations must deliver a copy of the financial statements to each unit owner.
- Subsection (15) is created to provide for reconstruction in the event of a casualty. Where condominium property is damaged, not later than 60 days after the casualty, the board must obtain reliable and detailed estimates of the cost to repair the damaged property to substantially the same condition existing immediately prior to the casualty and substantially in accordance with the original plans and specifications. If the damage exceeds 50 percent of the property's value, the condominium may be terminated unless, within 90 days after the casualty, 75 percent of the unit owners agree to reconstruction. The board must engage the services of a registered architect and knowledgeable construction specialists to prepare any necessary plans, receive and approve bids for reconstruction, arrange for disbursement of construction funds, approve the work and all other matters pertaining to the repair and reconstruction.

At any time during reconstruction, or if the insurance proceeds are insufficient to pay the estimated costs, assessments must be made against all unit owners according to their ownership interests as set forth in the condominium declaration. Assessments must be made against unit owners for damage to their units according to the cost of reconstruction or repair of their respective units and the assessments must be levied and collected as all other assessments are provided in the Condominium Act. Thus, the cost to repair damage to a unit may be assessed solely against that unit and may be foreclosed as with an assessment foreclosure.

Section 4 amends s. 718.112, F.S., relating to bylaws, as follows:

- Condominium association board members may determine the number of board members if the bylaws are silent, and may require five members to be unit owners.
- Associations are required to respond to unit owner inquiries by certified mail. Provisions in current law that authorize associations to adopt reasonable rules regarding the frequency and manner of responding to unit owner inquiries are deleted.
- Board action cannot be taken on a resolution adopted without an open meeting of the board and the board must address agenda items proposed by a petition of 20 percent of the unit owners. A unit owner's faxed signature will be sufficient for any matter that requires the signature of a unit owner. Correspondence from the board to unit owners must be accomplished by the same delivery method used by the owner. Items may be taken up at a board meeting on an emergency basis without being originally included on the agenda pursuant to a petition of 20 percent of the unit owners,

- If a board meeting is held to consider regular or special assessments, the notice of the meeting must include a description of the nature, cost, and breakdown of any such assessments.
- Deletes provisions authorizing associations to establish alternative election procedures in their bylaws. The only prohibition against eligibility for board membership is conviction of a felony by any court of record in the United States, without the restoration of civil rights.
- The association or its representative will continue to carry out the duties related to notice of election. However, an association may no longer use both sides of the paper when printing candidate information sheets. All ballot envelopes would have to be secured in a sealed ballot box immediately upon receipt and may not be opened in advance of the election meeting.
- Owners will have the right to have items placed on the agenda of the annual meeting and voted upon if a written request is made by 20 percent or more of all voting interests at least 90 days before the date of the annual meeting;
- The association's annual budget will have to include estimated revenues and expenses. The budget from the prior year will remain in effect until the association has adopted the new budget for the current year. In addition, the budget will have to include reserves for structural repairs.
- Associations will have to include a disclaimer on all ballots involving waiver or reallocation of reserves stating that waiver or reallocation of existing reserves may result in unanticipated special assessments. Reserve waiver votes will have to be taken at the annual meeting. The division will be required to promulgate a ballot form for waiving or reducing reserves. The association, after turnover from the developer's control, could use reserves for non-scheduled purposes in the case of a catastrophic event.
- Except in the case of an emergency, or unless otherwise specified in the bylaws, the board cannot obtain a loan or line of credit in an amount that exceeds 10 percent of the association's current year budget. After the declaration of condominium is recorded, and until such time as the association has been created, all common expenses shall be paid by the developer. Assessments must be levied based on the adopted budget or authorized special assessment, and accelerated assessments are due and payable after a claim of lien has been filed.
- Effective January 1, 2008, the current arbitration program for recall disputes is removed from the division and replaced with a program to be operated by the condominium ombudsman. A recall of the board will be effective immediately, and the board may submit rebuttal arguments to the Ombudsman within five business days of service of the agreement. The Ombudsman must certify or not certify the recall within 10 business days after receipt of the written agreement. If the Ombudsman does not certify the agreement, the Ombudsman shall notify the member or members of the board and the board president of the reasons for not doing so, and the unit owners will have an additional five business days to correct the

deficiency. The board members will then have an additional five business days to submit rebuttal argument and supporting evidence.

- The requirement that the bylaws include a provision for mandatory nonbinding arbitration as provided in s. 718.1255, F.S, is repealed.

Section 5 amends subsection (1) of s. 718.113, F.S., relating to maintenance, to provide that maintenance of limited common elements must either be performed by the unit owners entitled to exclusive use of the limited common elements, or assessed against those unit owners if the association performs the maintenance.

Subsection (5) is amended to require the board to restate hurricane shutter specifications at each annual meeting, and specifies that the board may, subject to unit owner approval, install, maintain, repair, or replace hurricane shutters or other hurricane protection that complies with the applicable building code.

Subsection (6) is created to require that the board have the condominium buildings inspected every five years by a professional engineer or architect registered in the state for the purposes of determining whether the building is structurally and electrically safe, and determining if any immediate maintenance is required. Detailed reporting requirements are required of the engineer or architect and will become an official record of the association.

Subsection (7) is created to prohibit the board from adopting any rule impairing any rights guaranteed by the First Amendment to the Constitution of the United States, or s. 3 of Article I of the Florida Constitution, including, but not limited to, the free exercise of religion. The bill expressly prohibits rules that fail to accommodate reasonable religious practices or the attachment of religiously mandated objects to the front-door area of a condominium unit.

Section 6 creates s. 718.1224, F.S., relating to SLAPP suits, to prohibit strategic lawsuits against public participation, otherwise known as SLAPP suits, against unit owners. Governmental entities, business organizations, and individuals in Florida will be prohibited from filing or causing to be filed through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against a condominium unit owner without merit and solely because such condominium unit owner has exercised the right to petition for redress of grievances on matters relating to the condominium association. A condominium unit owner sued in violation of this section will have a right to an expeditious resolution. The court may award actual damages and as much as treble damages to a prevailing unit owner as well as attorney's fees and costs. A condominium association cannot expend association funds in prosecuting a SLAPP suit against a unit owner.

Section 7 amends paragraph (4)(e) of s. 718.1255, F. S., relating to alternative dispute resolution, to allow the division to promptly refer an arbitration case to mediation, and removes the ability of the parties in mediation to seek to recover any costs and attorney's fees as part of the costs and attorney's fees that may be recovered by the prevailing party in any subsequent litigation.

Section 8 creates s. 718.1257, F.S., relating to emotional-support animals, to provide that unit owners or renters of a condominium have the right to own a companion animal if the animal is deemed helpful to the person's physical or psychological well-being as attested by at least two qualified health care professionals. Any law or rule contrary to this provision shall be deemed unconscionable and of no legal effect. The unit owner is entitled to attorneys fees in any court action that requires the unit owner to enforce this provision.

Section 9 amends subsection (1) of s. 718.302, F.S., relating to association agreements, to include services and products in the list of grants and reservations made by an association prior to turnover that must be fair and reasonable and which may be canceled by unit owners other than the developer.

Section 10 amends subsection (1) of s. 718.3025, F.S., relating to agreements for operation, maintenance and management, is amended to require that in order for a written contract to be enforceable, it must contain provisions that all obligations be complete within one year and must prohibit automatic renewal of the contract.

Section 11 amends s. 718.3026, F.S., relating to contracts for products and services, to provide that a contract with a service provider may not have a term longer than three years, and may not contain an automatic renewal clause. A contract for construction or repair of the property which exceeds 10 percent of the total annual budget, including reserves, must occur under the written advisement of an attorney.

Section 12 amends s. 718.303, F.S., relating to the obligations of owners, to clarify that the committee presiding over the hearing required before a fine can be imposed on a unit owner must be made up of unit owners who are not members of the board. Anyone subject to an action under this section must be notified of the violation by certified mail, return receipt requested. Except in the case of imminent danger to person or property, the person noticed has 30 days in which to respond in writing.

Section 13 amends s. 718.404, F.S., relating to mixed-use condominiums, to provide for retroactive application certain provisions as a remedial measure.

Section 14 amends paragraph (1)(e) of s. 718.501, F.S., relating to powers and duties of the Division of Florida Land Sales, Condominiums, Homeowner's Associations, and Mobile Homes, to provide that the division must prepare and disseminate a prospectus and other information as provided in this section. Paragraph (1)(j) is amended to provide that the division must work in conjunction with the recommendations of the Ombudsman when providing training and education programs for board members and unit owners. Paragraph (1)(n) is created to establish that upon a finding that any association has committed a violation within the jurisdiction of the division, the association must mail and post a notice to all owners setting forth the facts and findings and the corrective action required. The association must also participate in an educational training program directly related to the violation, taught by a division-approved provider, and completed within 90 days from the notification of the finding to the board members. Failure of the association to comply with these provisions will subject the association to penalties in the amount of \$500 for each week that the notice is not provided to the unit owners or the educational training is not completed.

Section 15 amends s. 718.5011, F.S., relating to the appointment of an Ombudsman, to clarify that the Ombudsman is located within the Division of Florida Land Sales, Condominiums, and Mobile Homes, solely for administrative purposes. The Ombudsman shall exercise policymaking and other delegated functions independently of the Department of Business and Professional Regulation and without approval or control of the department. The department is directed to provide administrative support to the ombudsman in matters pertaining to budget, personnel, office space, equipment, and supplies.

Section 16 amends s. 718.5012, F.S., relating to the powers and duties of an ombudsman, to provide that any unit owner or association acting in good faith on the advice or opinion of the office of the ombudsman is immune from any penalties or actions. Ombudsman responsibilities relating to the development of policies and procedures on behalf of unit owners and others are repealed.

Section 17 amends subsection (21) of s. 718.504, F.S., relating to prospectus or offering circular, to provide that the estimated operating budget for the condominium and the association, required to be in the prospectus or offering circular, contain the estimated monthly and annual revenues, as well as expenses, which are earned by the association as well as collected from the unit owners. Provisions of law allowing the budget to be stated in terms of more than one annual period or distinguish between the periods prior to and after turnover of developer control are repealed.

Section 18 amends s. 720.303, F.S., relating to association powers and duties, as follows:

- The association may establish and fund reserve accounts for capital expenditures and items of deferred maintenance for which the association is responsible to the extent that the governing documents do not limit increases in assessments, including reserves.
- Specified disclosures must be included in the annual financial report indicating that the budget of the association not provide for reserve accounts for capital expenditures and deferred maintenance that may result in special assessments.
- The deadline for homeowners' associations completing their annual financial reports is extended from 60 to 90 days after the end of the fiscal year, or annually as provided in the bylaws. The reports must be provided to the homeowners within 21 days after completion of the statements, but not less than 120 days from the end of the fiscal year. The reports shall be prepared in accordance with generally accepted accounting principles as adopted by the Board of Accountancy.

Section 19 amends s. 720.307, F.S., relating to transition of association control, to lower the percentage of sell-out that triggers turnover from 90 percent to 75 percent. The developer is required to convey title to common areas to the association immediately upon incorporation of the association, and any additional common areas acquired by the developer must be conveyed immediately to the association.

For associations incorporated after December 31, 2007, the developer is required to turnover to the board the financial records and source documents from the incorporation through the date of turnover to the board.

Section 20 creates subsection (5) in s. 720.3075, F.S., relating to prohibited clauses in association documents, to prohibit an association from restricting a homeowner from mounting or employing shutters or other hurricane protection on any portion of the home during any time that a hurricane warning has been declared, an evacuation order given, or with certain specified periods following the conclusion of a hurricane watch or evacuation. Associations may adopt and enforce equal or lesser restrictions than local governments when a local government restricts a homeowner's ability to mount or employ temporary or permanent shutters or other hurricane protection. The association may adopt restrictions governing the color or form of shutters or other permanent exterior window coverings, but may not restrict the time or duration for shutters or other hurricane protection to be open or closed during any period.

Section 21 creates an unnumbered section of law to provide that notwithstanding any provision contained in a declaration of condominium, condominium bylaws, or other documents, a condominium developer who rents or leases unsold units must pay all monthly maintenance fees on those units to the association as if the units were owned by individual owners.

Section 22 provides an effective date of July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require cities and counties to expend funds or limit their authority to raise revenues or receive state-shared revenues as specified by s. 18, Art. VII, State Constitution.

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:

Indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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