

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/CS/SB 2084

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

SUBJECT: Community Associations

DATE: April 9, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Molloy</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
3.	_____	_____	<u>BI</u>	_____
4.	_____	_____	<u>JU</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The committee substitute (the bill) revises provisions relating to community association management. With regard to condominiums, the bill revises and creates provisions relating to:

- Condominium associations – corporate entity, official records, and financial reporting.
- Condominium bylaws – quorum and voting requirements; board of administration meetings, unit owner meetings, annual budget, recall of board members, director or officer delinquencies, and director and officer offenses.
- Board vacancies – failure to fill vacancy.
- Maintenance of common elements – display of religious decorations.
- Termination of condominium – natural disasters.
- Liens – notice for liens filed against a unit.
- Strategic lawsuits against public participation – Prohibition against "SLAPP suits."
- Association emergency powers – creating powers.
- Receivership notification – requiring written notice to unit owners.
- Transfer of association control – election of members under certain conditions, turnover inspection reports.

- Operating or maintenance agreements – disclosure of financial or ownership interest.
- Contracts for products or services – competitive bids, disclosing conflicts of interest.
- Obligations of owners – hearing requirements where fines will be levied.
- Division of Florida Land Sales, Condominiums, and Mobile Homes – authority and responsibility.
- Community Association Living Study Council – membership and functions.
- Developer disclosure – summary of governance of condominium association provided to prospective purchasers.

This bill substantially amends the following sections of the Florida Statutes: 468.431, 468.4315, 468.432, 468.433, 468.436, 718.111, 718.112, 718.1124, 718.113, 718.117, 718.121, 718.1255, 718.301, 718.3025, 718.3026, 718.303, 718.501, 718.50151, and 718.503. This bill creates sections 718.1224, 718.1265, and 718.127, Florida Statutes.

II. Present Situation:

Regulatory Council of Community Association Managers - Part VIII, chapter 468, F.S.

Community association managers are regulated by the Regulatory Council of Community Association Managers within the Department of Business and Professional Regulation. A community association is a residential homeowners' association in which membership is a condition of ownership of:

- A unit in a planned unit development, or
- A lot for a home or a mobile home, or
- A townhouse, villa, condominium, cooperative, or other residential unit which is part of a residential development scheme and which is authorized to impose a fee which may become a lien on the parcel.

Community association management is any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 50 units or have an annual budget or budgets in excess of \$100,000:

- Controlling or disbursing funds of a community association,
- Preparing budgets or other financial documents for a community association,
- Assisting in the noticing or conduct of community association meetings, and
- Coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

Community association managers are required to be licensed, but a person who performs clerical or ministerial functions under the direct supervision and control of a licensed manager or who is charged only with performing the maintenance of a community association and who does not assist in any of the management services described in this subsection is not required to be licensed under this part.

Condominiums – Chapter 718, F.S.

Condominiums - A condominium is a “form of ownership of real property which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.”¹ A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.² A declaration is like a constitution in that it strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the board of the condominium association has broad authority to enact rules for the benefit of the community.³

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.⁴ A declaration of condominium may be amended as provided in the declaration. If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of two-thirds of the units.⁵

Condominiums are administered by a board of directors referred to as a board of administration,⁶ and regulated by the department's Division of Florida Land Sales, Condominiums, and Mobile Homes (division) in accordance with ch. 718, F.S.

Condominium Associations - Condominium associations must be Florida corporations, either for profit or not-for-profit, except that any association which was in existence on January 1, 1977, need not be incorporated. Subsection (1) of s. 617.0834, F.S., holds that officers or directors of not-for-profit corporations are not liable for a breach or failure to perform their duties as an officer or director except under specific conditions.

Official Records of the condominium association - Official records of the association must include copies of the governing documents of the association, its insurance policies, and accounting records. The association is required to keep accounting records for the association for each condominium which the association operates. The association's accounting records are required to be maintained for a period of not less than seven years. The association's official records must be maintained in this state and must be made available to the unit owner within five days after receipt of written request by the board or its designee.

The association official records must be open to inspection by any member of the association at all reasonable times. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. Statutory sanctions are provided when an association denies a member access to its official records including actual damages, minimum damages for willful failure to comply of \$50 per calendar day up to 10 days beginning on the 11th day after

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ *Neuman v. Grand View at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003).

⁴ Section 718.104(5), F.S.

⁵ Section 718.110(1)(a), F.S.

⁶ Section 718.103(4), F.S.

receipt of the request, and the payment of attorney fees on behalf of the person prevailing in an enforcement action.

The following records are expressly exempted from inspection by a member or unit owner:

- Any record protected by attorney-client or work-product privilege;
- Information obtained by the association with the lease, sale or transfer of a parcel that is otherwise privileged by state or federal law;
- Disciplinary, health, insurance, and personnel records of the association's employees; or
- Medical records of unit owners or other community residents.⁷

Financial Reporting - A condominium association has 90 days to prepare and complete a financial report for the preceding fiscal year either after the end of the fiscal year or annually as provided in bylaws. The types of financial statements or information that must be provided are based on the total annual revenues of the association.

- If the association has a total annual revenue of \$100,000 or more, but less than \$200,000, then the association must prepare compiled financial statements.⁸
- If the association has a total annual revenue of at least \$200,000 and not less than \$400,000 then the association must prepare reviewed financial statements.⁹
- If the total annual revenue is \$400,000 or more, then the association must prepare audited financial statements.¹⁰
- If the total annual revenue is less than \$100,000, then a report of cash receipts must be prepared.
- An association with less than 50 units regardless of annual revenue must prepare a report of cash receipt and expenditures instead of financial statements.¹¹

Meetings and approval of budgets must occur prior to the end of the fiscal year.¹²

Voting Requirements, Meeting and Notice requirements, Elections, and Budget - Unit owners are prohibited from voting by general proxy, but may vote by limited proxies that substantially conform to the limited proxy form adopted by the division.¹³ Limited proxies and general proxies may be used to establish a quorum, and for other specified purposes.

⁷ Section 720.303(1),(2),(3),(4), F.S.

⁸ According to information provided by Florida Institute of Certified Public Accountants (FICPA), a compilation of financial statements does not provide an expression of assurance regarding the financial statements and whether modifications to the financial statements are necessary.

⁹ According to information provided by FICPA, a review of financial statements provides the accountant with a reasonable basis for expressing a limited assurance that there are no material modifications that should be made to the statements for them to be in conformity with Generally Accepted Accounting Principals (GAAP).

¹⁰ According to information provided by FICPA, an audit of financial statements permits the accountant to provide a reasonable basis for expressing an opinion regarding all material respects of the financial statements.

¹¹ Section 718.111(13)(b)(2), F.S.

¹² Section 718.111(13)(d)3., F.S.

¹³ The division's limited proxy form is BPR Form 33-033. A copy of the form is available at the division's Internet website located at: http://www.myflorida.com/dbpr/lsc/documents/33-033_sample_limited_proxy.pdf (Last visited March 21, 2008).

No proxy, limited or general, can be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given.

Notices for meetings of the condominium board of administration must be conspicuously posted on the condominium property at least 48 continuous hours preceding the meeting except in an emergency. Any item that is not noticed may be taken up in a meeting on an emergency basis by a majority plus one member of the board. However, the action must be ratified at the next meeting. Notice of meetings where regular assessments against unit owners are to be considered must contain a statement that assessments will be considered at the meeting and the nature of the assessments. Annual unit owner meetings are required.

Board members must be elected by written ballot or a voting machine and cannot be elected by proxy. At least 60 days before a scheduled election, the association must mail, deliver or electronically transmit, either by a separate association meeting or in another association mailing, including regularly published newsletters, a first notice of the date of election to the unit owners. Anyone who wishes to be a candidate for the board must give written notice to the association at least 40 days before a scheduled election. The association must mail a ballot and a list of all candidates along with the written notice and agenda to all unit owners entitled to vote. At the request of a candidate, the association must include an information sheet by the candidate in the mailing. The information sheet cannot be larger than 8 ½ inches by 11 inches and must be given to the association no less than 35 days before the election. The association is not liable for the contents of the information sheet.

Elections must be decided by a plurality of the ballots cast but there is no quorum requirement. However, at least 20 percent of the eligible voters must cast a ballot in order for the election to be valid. A unit owner cannot let anyone else vote his ballot, and if a ballot is cast improperly then it is deemed invalid and a unit owner may be fined by the association for voting improperly as well. If a vacancy occurs before the expiration of a term, it may be filled by the affirmative vote of the majority of the remaining directors, even if there is less than a quorum, or by the sole remaining director. Alternatively, a board may hold an election to fill the vacancy. If an election is held, it must conform to the process outlined already for electing board members unless the association has provided for an alternative voting procedure.

An association may, by an affirmative vote of a majority of the total voting interests,¹⁴ provide for an alternative voting and election procedure contained in the association bylaws. The vote may be a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by a limited or general proxy.

The association's proposed annual budget of common expenses must be detailed and show the amounts budgeted by accounts and expense classifications, including, but not limited to, those

¹⁴ Section 718.103(10), F.S., defines voting interests to mean "the voting rights distributed to the association members pursuant to s. 718.104(4)(j), F.S. In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium."

expenses listed in s. 718.504(21), F.S.¹⁵ The budget is required to include reserve accounts for capital expenditures and deferred maintenance in addition to annual operating expenses. The reserve accounts plus any accrued interest must remain in the accounts and may only be used for authorized reserve expenditures, unless other uses are approved in advance by a majority vote.

Before the developer turns over control of the association to the unit owners, the developer-controlled association must not vote to use reserves for purposes other than what they were intended without the approval of a majority of all non-developer voting interests. The only interests that can vote to waive or reduce reserves funds or using existing reserve funds for other than intended purposes are the voting interests of the units subject to the assessment used to fund the reserves in question.

Display of Religious Decorations - The First Amendment of the United States Constitution grants the freedoms of speech, religion, press, assembly, and petition. The First Amendment applies to the states through the Fourteenth Amendment, which prohibits states from depriving any person of life, liberty, or property without due process. Chapter 718, F.S., does not specifically provide for the display of religious decorations. However, s. 718.113(4), F.S., permits unit owners to display one portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day. It also permits the display, in a respectful way, of portable, removable official flags, not larger than 4½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard. Unit owners have the right to display these flags regardless of any declaration rules or requirements dealing with flags or decorations.

III. Effect of Proposed Changes:

Community Association Management – Chapter 468, F.S.

Definitions – The bill provides the following definition revisions in s. 468.431, F.S.:

- “Community association management” is amended to apply to associations serving more than 10 units with an annual budget of more than \$100,000.
- “Community association management firm” is created to mean a corporation, limited liability company, partnership, trust, association, sole proprietorship, or other similar organization engaging in the business of community association management for the purpose of providing any of the services of community association management.

Council Members - Subsection (1) of s. 468.4315, F.S., is amended to provide that the two council members who are required to be residents of the state and who must have no connection with the business of community association management may not be prohibited from serving on the council because they have been a resident or board member of a community association. The council is authorized to establish an education program relating to professional community

¹⁵ The expenses specified in s. 718.504(21), F.S., include: expenses for the association and condominium; administration of the association; management fees; maintenance; rent for recreational and other commonly used facilities; taxes upon association property; taxes upon leased areas; insurance; security provisions; operating capital; reserves; fees payable to the division; and expenses for a unit owner.

association managers.¹⁶ Council members will serve without compensation but may receive per diem and travel expenses. Council responsibilities are established.

Licensure of Community Association Management Firms – Subsection (2) of s. 468.432, F.S., is amended to provide for the following:

- Effective January 1, 2009, community association management firms (firms) that are responsible for management of more than 10 units or a budget of \$100,000 or more must be licensed by the department.
- Firms must apply to the department for licensure and must be actively registered and authorized to do business in the state before licensure.
- Applicants for licensure must designate who will respond to all inquiries from and investigations by the department or division.
- Licensed firms must notify the department within 30 days following any change of information contained in the licensure application.
- Licenses expire on September 30 of odd-numbered years and must be renewed every two years by application and payment of the renewal fee.¹⁷

If the license of at least one individual active community association manager member is not in force, the license of the community association management firm or other similar organization is canceled automatically during that time.¹⁸ As a condition of licensure, firms agree to the employment only of licensed persons in the direct supervision of community association management firms.

Licensure by Examination – Section 468.433, F.S., is amended to provide that the department may refuse to certify an applicant if the applicant is found to have provided management services without having the required license, and to clarify that only qualified applicants who successfully complete the examination may be licensed by the department.

Community Association Management Disciplinary Proceedings - Section 468.436, F.S., is amended to require the department to investigate complaints for violations of part VIII of ch. 468 and ch. 455, F.S., and rules adopted thereunder. Within 30 days of receipt of a complaint, the department must acknowledge the receipt of the complaint and notify the complainant whether the complaint is within its jurisdiction. The department's investigation must be completed within 90 days of receipt of the original complaint or of timely requested additional information. After 90 days, the department may continue the investigation and may bring an administrative action if reasonable cause exists to believe that a violation has occurred. If the investigation is not completed within the prescribed time frames, the department must provide the complainant, in writing, a monthly notice of the status of the investigation. The notice must inform the

¹⁶ Section 468.433(2)(b), F.S., provides the pre-licensure education requirements for community association managers.

¹⁷ The council's authority to set fees is provided in s. 468.435, F.S.

¹⁸ The meaning and intent of this provision is unclear. It is not clear whether the term "one individual active community association manager member" refers to an employee or other member of "a community association management firm." Automatic cancellation is the equivalent of a license revocation without notice, including the exercise of the procedural rights under ch. 120, F.S. (See Other Constitutional Issues, *infra*.)

complainant of any hearing rights he or she may have under ss. 120.569 and 120.57, F.S.¹⁹ The department may take disciplinary action against a licensed community association manager or firm for contracting, on behalf of an association, with any entity in which the licensee has a financial interest that is not disclosed.

Condominiums – Chapter 718, F.S.

Condominium Associations - Subsection (1) of s. 718.111, F.S., is amended to require the officers, directors, and agents of an association to discharge their duties in good faith, and provides for personal liability for monetary damages if they fail or breach their duty to perform and the failure or breach constitutes a violation of state law under s. 617.0834, F.S. The applicable provision in s. 617.0834, F.S., providing for personal liability for money damages of the officers and directors of a not for profit corporation or association, is restated.

Official Records – Subsection (12) of s. 718.111, F.S., is amended to provide that any person who knowingly or intentionally defaces, destroys, or fails to create or maintain accounting records is personally subject to a civil penalty imposed by the division for each day of a continuing violation not to exceed \$5,000 per offense. The official records of the association must be kept within the state for at least seven years, and must be available to a unit owner at a location within 45 miles of the condominium property. An exception to the distance requirement is provided for official records of a timeshare condominium. Social security numbers, driver's license numbers, credit card numbers, and other personal identifying information of unit owners, occupants or tenants in the possession of the association are not accessible to unit owners.

The turnover inspection report (created as s. 718.301(4)(p), F.S.) must be maintained by the association as an official record. The association may make the records available to the unit owner electronically via the Internet or available to be viewed in an electronic format on a computer screen and printed upon request.

Financial Reporting - Subsection (13) of s. 718.111, F.S., is amended to require that the division adopt rules that include uniform accounting principals and standards for stating the disclosure of at least a summary of the reserve funds that provides information related to the funding of reserves at a level that prevents the need for a special assessment. If reserves are not sufficient, the summary must state the amount necessary to fund the reserves at a level that will prevent a special assessment. The person preparing the financial reports may rely on the turnover inspection report prepared for or provided to the association to meet the fiscal and fiduciary standards. An association or board of administration may not waive financial reporting for more than two consecutive years, and the developer must pay for any audit or review that is done before control is transferred from the developer to a unit owner-controlled association.

Bylaws Required Provisions - Subsection (2) of s. 718.112, F.S., is amended to provide the following:

¹⁹ Sections 120.569 and 120.57, F.S., provide hearing rights to persons whose substantial interests are affected by a state agency's action.

Voting: A voting interest or consent right allocated to a unit owned by an association may not be exercised or considered for any purpose.

Board Meetings and Notice Requirements: If 20 percent of the voting interests petition the board to address an item of business, the board must address that item at its next regular board meeting or at a special meeting of the board, but must take up the item not later than 60 days after the receipt of the petition. A notice of a meeting at which regular or special assessments are to be considered must specifically state that assessments will be considered, and include the estimated cost and a description of the assessments as well as the nature of the assessment.

The annual meeting of the unit owners must be held at the location provided in the association bylaws. If the location of the annual board meeting of unit owners is not provided in the association bylaws, then the meeting must be held within 45 miles of the condominium property. An exception to the distance requirement is provided for timeshare condominiums.

Elections: Members of the board may stand for reelection, but if no person is interested in filling the position of a board member whose term has expired, such board member shall be automatically reappointed and need not stand for reelection. In a condominium association of more than 10 units, co-owners of a unit are prohibited from serving as board members at the same time. Unit owners who have been suspended or removed by the division for failure to pay fees or assessment are not eligible for board membership. Convicted felons who have had their civil rights restored for a period of at least five years are eligible for board membership.

Prior to a scheduled election, the association must provide the unit owners with a certification form provided by the division that attests that the unit owner has read and understands, to the best of the unit owner's ability, the governing documents of the association, the provisions of this chapter 718, and any applicable rules.²⁰ Provisions allowing an association to opt out of the statutory election process if the board decides to hold an election to fill a board vacancy that was vacated before the expiration of a term are revised so that associations governing more than 10 units may not opt out. Also, only associations governing 10 or fewer units may, with an affirmative vote of a majority of the total voting interests, provide different voting and election procedures in the association bylaws than those required by state law, including voting by limited or general proxy.

Annual Budget: The proposed budget must include estimated revenues and expenses, must be detailed, and must show the amounts budgeted by accounts and any required expense classifications. All proxy ballots that involve questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than the purposes for which they were intended must contain the following statement in capitalized, bold letters in a font size larger than any others used on the face of the proxy ballot:

**WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING
ALTERNATE USES OF EXISTING RESERVES MAY RESULT IN UNIT**

²⁰ The requirement does not specify whether the certification form must be signed. It is not clear whether the unit owner signs the certification form, or if the candidate for the board signs the certification form, but the bill requires that a signed certification form must be included in the information sheet that is provided with the ballot.

OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE RESERVE ITEMS.

Miscellaneous required provisions:

- Vacancies resulting from a recall, as well as a removal, may be filled.
- A director or officer that is more than 90 days delinquent in the payment of any fee or assessment is deemed to have abandoned the office.
- A director or officer who is charged with a felony theft or embezzlement offense involving the association's funds or property shall be suspended from office pending the resolution of the charge. The vacancy must be filled according to applicable law. The interim board members shall serve in place of the suspended member until such charges are resolved and the suspended member is reinstated or resigns.

Failure to fill vacancies on board of administration – Section 718.1124, F.S., is amended to provide that if an association fails to fill vacancies on the board in accordance with the bylaws, any unit owner may give notice of intent to apply to the circuit court for the appointment of a receiver, and form the notice is provided. The notice must be provided to the association by certified mail or personal delivery, and must be provided to each unit owner of the association at least 30 days before the filing of a petition seeking receivership. If the vacancy has not been filled within 30 days of receipt of notice of intent, the unit owner may proceed with the petition. If a receiver is appointed, all unit owners must receive written notice. Once the vacancy is filled, the court must relieve the receiver of the appointment.

Maintenance – Subsection (2) of s. 718.113, F.S., is amended to provide that prohibitions and requirements relating to material alterations or substantial additions except as authorized, is intended to clarify existing law and applies to associations existing on October 1, 2008. Subsection (5) is amended to require that the board may, upon majority vote of the condominium interests, install hurricane shutters or hurricane protection that complies with or exceeds the applicable building code.

Subsection (6) is created to require that condominium associations inspect condominium buildings greater than three stories in height at least every five years. If the building is not available for inspection on October 1, 2008, the association shall have the condominium buildings inspected within five years to provide a report under seal of a licensed architect or engineer authorized to practice in this state attesting to required maintenance, useful life, and replacement costs of the elements contained in the report.

Display of Religious Decorations – Subsection (7) of s. 718.113, F.S., is created to provide that an association may not refuse the request of a unit owner for a reasonable accommodation for the attachment of a religious object not to exceed 3 inches wide, 6 inches high, and 1.5 inches deep on the mantle or frame of the door of the unit owner.

Termination of Condominiums – Subsection (7) of s. 718.117, F.S., is amended to provide that if a receiver is appointed to conclude the affairs of an association after a natural disaster, the court must direct the receiver to provide all unit owners with written notice of the receiver's appointment. The notice must be mailed or delivered within 10 days after the appointment. Notice must be sent to the address used by the property appraiser for notice to the unit owner.

Liens – Subsection (4) is created in s. 718.121, F.S., to provide that except as otherwise provided in chapter 718, a lien may not be filed by the association against a unit owner until 30 days after the date on which a notice of intent to file lien is delivered to the unit owner by certified mail, return receipt requested, and by first-class mail. Alternatively, notice may be served by the process and service requirements of chapter 48, F.S., and the Florida Rules of Civil Procedure.

Prohibition against SLAPP Suits - Section 718.1224, F.S., is created to prohibit “strategic lawsuits against public participation” or “SLAPP suits”, and provides legislative findings that such lawsuits are against the public interest. A SLAPP lawsuit occurs when association members are sued by individuals, business entities, or governmental entities for matters arising out of a unit owner's appearance and presentation before a governmental entity on matters related to the condominium association.

Unit owners have a right to an expeditious resolution of such an action, including the right to petition for a motion to dismiss or for a summary judgment. The court may award the unit owner actual damages for a violation of this prohibition and may also award treble damages. However, the court must state a basis for an award of treble damages. The court is further required to award the prevailing party reasonable attorney's fees and costs. Condominium associations are barred from expending association funds in prosecuting a SLAPP suit against a unit owner. (A similar prohibition against SLAPP suits by homeowners' associations is contained in s. 720.304(4), F.S.)

Alternative Dispute Resolution – Subsection (3) of s. 718.1255, F.S., relating to the legislative finding for the alternative dispute resolution provisions, is amended to delete the finding that the courts are being overcrowded with condominium and other disputes.

Association Emergency Powers – Section 718.1265, F.S., is created to provide the condominium association with emergency powers in a state of emergency declared by an executive order, proclamation, or rule issued by the Governor. Powers include, but are not limited to:

- Conducting board meetings and membership meetings with notice given as is practicable.
- Name assistant officers who shall have the same powers as executive officers of the association.
- Enter into agreements with local government for debris removal.
- Implementing a disaster plan
- Limiting or closing entry to the condominium.
- Requiring an evacuation of the condominium property when a mandatory evacuation order has been issued for the local area. A liability exemption is provided to the association when a unit owner refuses to evacuate.
- Contract for items and services which unit owners are normally responsible for. Unit owners must reimburse the association and the association may use its lien authority to collect.
- Levy special assessments without a vote of the unit owners.
- Borrow money and pledge association assets without approval of the unit owners.

The emergency powers are limited to that time necessary to reasonably protect the health, safety, and welfare of the association, the unit owners, and other persons, to mitigate further damage, and to make emergency repairs.

Receivership notification – Section 718.127, F.S., is created to provide that upon the appointment of a receiver by a court for any reason relating to the condominium association, the court must direct the receiver to provide written notice to the unit owners of the receiver's appointment.

Transfer of Association Control – Subsection (1) of s. 718.301, F.S., is amended to provide that unit owners, other than the developer, may elect a majority of the condominium association when the developer files a petition seeking protection from bankruptcy, or when a receiver for the developer is appointed by a circuit court. Paragraph (p) is created in subsection (4) to require that at the time control of the association is transferred from the developer to the unit owners, the developer must include in the official records a turnover inspection report, prepared under seal of a Florida licensed architect or engineer, that attests to required maintenance, useful life, and replacement costs of specified elements.

Agreements for operation and maintenance – Paragraph (f) is created in subsection (1) of s. 718.3025, F.S., to require that any maintenance or management contract between the association and the contracting party must disclose any financial or ownership interest a board member or any party providing maintenance or management services has with the contracting party. Failure to disclose makes the contract invalid and unenforceable.

Contracts for Products and Services – Section 718.3026, F.S., is amended to provide that associations with 10 or fewer units may opt out of the requirements for contracts for products and services if two-thirds of the unit owners vote to do so. Competitive bid requirements for contracts executed before January 1, 1992, an exclusion from competitive bid requirements for materials, equipment, or services provided to a condominium under a local government franchise agreements; and provisions that allow condominiums whose bylaws authorize competitive bidding for services using requirements at least as stringent as those required by law are deleted.

With respect to contracts or other transactions between the association and one or more of its directors, or contracts between the association and any other entity in which one or more of the association's directors are directors or officers of the entity, or have a financial in the entity, the association must disclose the conflict of interest; the disclosure must be entered into the written minutes of the meeting; and approval of the contract or transaction requires an affirmative vote of two-thirds of the directors present. At the next regular meeting or special meeting of the members, the contract or transaction must be disclosed. With a motion by a member, the contract or transaction must be brought up for a vote and may be cancelled by a majority vote of the members present.

Obligations of Owners – Subsection (3) of s. 718.303, F.S., is amended to provide that a hearing held to consider if a fine may be levied against a unit owner must be held before a committee of other unit owners who are not board members or persons who reside in a board member's household.

Authority, responsibility, and duties of the Division of Florida Land Sales, Condominiums, and Mobile Homes - Subsection (1) of s. 718.501, F.S., is amended to provide that in the performance of its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with the provisions of chapter 718 with respect to associations that are still under developer control, and complaints against developers that involve improper turnover or failure to turn over as required by law. After turnover has occurred, the division may only investigate complaints related to financial issues, elections, and unit owner access to association records.

Revisions are made to the division's authority to issue cease and desist orders. The division must bring suit against a developer who fails to pay required restitution and interest within 30 days after the expiration of the appeals period for a final order requiring such payment. Any officer or board member who willfully and knowingly violates a provision of chapter 718, may be removed as an officer or member of the board by the division for a period of time.

The division is provided with subpoena powers when a unit owner presents the division with proof that access to official records has been refused. When providing training for association board members, the division must provide educational programs as well and may include web-based, electronic-media based, and live training seminars in locations throughout the state.

Directors, officers, managers, and employees of a condominium association, community management firms, and condominium developers must reasonably cooperate with the division at all times. The division must refer to local law enforcement authorities any person who the division believes has altered, destroyed, concealed, or removed any records, documents, or any other item required to be kept or maintained.

Community Association Living Study – Section 718.50151, F.S., is amended to rename the Advisory Council on Condominiums as the Community Association Living Study Council. Revisions are made to the appointment process to specify that the Governor may appoint a member to represent timeshare condominiums. The council is created as of July 1 every 5 years, beginning July 1, 2008, and will exist for a 6-month term. The functions of the council include public input on community association living to make recommendations for changes in state laws relating to community association living. The council may review, evaluate, and advise the Legislature concerning revisions and improvements to condominium laws.

Developer disclosure prior to sale – Subsection (2) of s. 718.503, F.S., is amended to provide that on or after January 1, 2009, a prospective purchaser must receive from a seller a copy of the governance form that summarizes governance of condominium associations. The division is directed to provide the form, and specified information must be contained in the form.

The act shall take effect October 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill amends s. 468.432(2)(f), F.S., to provide that “if the license of at least one individual active community association manager member is not in force, the license of the community association management firm or other similar organization is canceled automatically during that time.” This provision may violate the due process requirements of the Florida Constitution and the Fifth and Fourteenth Amendments to the Constitution of the United States because an agency cannot end the duration or validity of a license without affording the licensee his or her hearing rights under ss. 120.569 and 120.57, F.S.²¹

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

To the extent that members of the public serve as members of a condominium association or as a community association manager, or as community association management firm, the bill contains several provisions that will have a fiscal impact.

The bill revises requirements relating to licensure of community association managers and firms. If the license of one person in a firm is not in force, the license of the entire firm is canceled. Disciplinary actions may be taken by the department against a licensed community association management firm that contracts on behalf of an association with an entity in which the licensee has a financial interest that is not disclosed.

The bill provides that an officer, director, or agent of a condominium association is liable for monetary damages for failure to perform duties which failure constitutes a violation of state law. Any person who willingly or intentionally defaces or destroys accounting records, or who knowingly or intentionally fails to create accounting records required to be maintained or created is personally subject to a civil penalty not to exceed \$5,000 per offense.

²¹ See *Silver Show, Inc. v. Division of Alcoholic Beverages and Tobacco*, 706 So.2d 386 (Fla. 4th DCA 1998).

Any audit or review of the financial statements of the association conducted prior to the time the developer turns over control of the association to the unit owners must be paid for by the developer.

Proxy ballots relating to votes on reserve funds for certain purposes are required to contain a notification statement that must be prepared following specific requirements. Unit owners who file a notice of intent for appointment of a receiver with the circuit court are required to prepare that notice in a specific format. Inspection requirements are provided for condominium buildings greater than three stories in height at least every 5 years.

Notice delivery requirements are provided for liens filed by an association against a unit owner, restrictions against SLAPP suits are provided, including authority for the court to award treble damages to a unit owner who is sued by a governmental entity, business organization, or individual in violation of the restriction.

Condominium associations are provided with emergency powers in a state of emergency including contracting for items or services normally the responsibility of the unit owner. The unit owner must reimburse the association and the association may use its lien authority to collect. In addition, the association may levy special assessments without a vote of the unit owners.

C. Government Sector Impact:

The Department of Business and Professional Regulation may be expected to incur costs associated with the following:

The Regulatory Council of Community Association Managers within the department is authorized to establish a public education program relating to professional community association management, and the bill provides that council members may receive per diem and travel expenses.

To the extent that the department is required to investigate complaints and allegations of violations of chapter 468 and chapter 455 filed against community association managers or firms. The investigation must be conducted and the department must take action within 90 days after sufficient information on the complaint is received.

The Division of Florida Land Sales, Condominiums, and Mobile Homes is directed to revise rules relating to uniform account principles and standards to include provisions relating to a summary of reserve funds, the sufficiency of the reserve account, and assessments necessary to bring the reserve account up to a level that is sufficient to avoid special assessments.

The division is directed to include a certification form provided by the division to be included in association literature relating to elections. The certification form must meet certain requirements.

The division is provided with complete jurisdiction to investigate complaints and enforce compliance with chapter 718 with respect to associations that are still under the control of the developer, and complaints relating to the improper turnover of an association to the unit owners.

The division is provided with subpoena powers to require production of requested records which were not delivered to a unit owner by a condominium association in a timely fashion, and is directed to provide education programs using web-based, electronic-media based, and live training and seminars in various locations throughout the state to provide the required training.

The division is directed to develop a governance form to be provided to a prospective purchaser by a seller which explains the governance role of the board of administration, owners rights, voting rights, and the rights and obligations of the board in enforcing rules in the condominium documents and rules adopted by the board.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs Committee on April 9, 2008:

This committee substitute revises provisions changing the name of the Regulatory Council of Community Association Managers, removes provisions of the bill relating to condominium insurance requirements, and revises and adds new provisions relating to the responsibilities of condominium unit owners and condominium associations.

CS by Regulated Industries on March 25, 2008:

The committee substitute (CS) ss. 468.431 and 468.4315, F.S., to rename the Regulatory Council of Community Association Managers (council) as the Board of Community Association Managers (board).

The CS also amends ss. 468.431(3), 468.431, 468.432, 468.433, and 468.436, F.S., relating to the regulation of community association management .

The CS amends s. 718.110(1)(a), F.S., relating to the amendments to the declaration of the condominium.

The CS amends s. 718.111(1)(a), F.S., regarding the duties and personal liability for money damages of the directors, and agents of the association.

The CS amends s. 718.111(11), F.S., regarding condominium insurance requirements.

The CS amends s. 718.111(12)(a)11. and (c), F.S., to reference “any person” instead of “any officer, director, or manager.” It also deletes the reference to appropriate criminal sanctions.

The bill creates s. 718.111(12)(a)16., F.S., to include a copy of inspection report provided in s. 718.301(4)(p), F.S.

The CS amends s. 718.111(12)(b), F.S., to require that the official records be kept within 45 miles of the association property instead of within the county in which the condominium property is located. It also permits the association to make the records available to the unit owners electronically via the Internet or to be viewed in an electronic format on a computer screen and printed upon request.

The CS amends s. 718.111(12)(c)4., F.S., to clarify that the exemption applies to the information “in possession of the association.”

The CS amends s. 718.111(13), F.S., to specify what must be included in the division’s rules that set forth the uniform accounting principals and standards to be used by the associations and for the financial reporting requirements for multicondominiums. It also provides for the verification of the financial report, and to require a confirmation that the financial operations of the association meet fiscal and fiduciary standards of ch. 718, F.S.

The CS amends s. 718.111(13), F.S., to require that the developer pay for any audit or review that is done before the turnover of control from the developer to a unit owner-controlled association.

The CS amends s. 718.112(2)(b)2., F.S., to permit proxies to be used to establish a quorum.

The CS amends s. 718.112(2)(c), F.S., to require that the board address as an item of business at its next regular board meeting or at a special meeting any matter in which 20 percent of the voting interests have petitioned the board to address. The board must address the petitioned item of business not later than 60 days after the receipt of the petition. The CS deletes the provision that any item not included on the notice may be taken up on an emergency basis by a majority vote plus one of the members of the board or by a petition of 20 percent of the unit owners.

The CS amends s. 718.112(2)(c), F.S., to reference “estimated cost” and “description of the assessments” instead of “cost” and “breakdown of assessments.”

The CS amends s. 718.112(2)(d)1., F.S., to provide for the expiration and reappointment of terms for members of the board. It also prohibits co-owners of a unit from serving as members of the board of directors at the same time. It also provides that convicted felons,

who have had their civil rights restored for a period of not less than five years, are eligible for board membership.

B. Amendments:

None.

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