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 Banking and Insurance Committee

BILL: CS/SB's 2086 and 2498

INTRODUCER: Regulated Industries Committee and Senators Jones and Bennett

SUBJECT: Department of Business and Professional Regulation

DATE: April 7, 2008 REVISED: 4/8/08

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/Combined CS**
2.	Emrich	Deffenbaugh	BI	**Fav/CS**
3.			JU	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill revises the insurance rights and obligations of condominium associations and unit owners, including the duty to obtain adequate hazard insurance. The bill provides that adequate hazard insurance is based upon the replacement cost of the property and requires that the full insurable value must be determined at least every 36 months. The bill maintains the current provision that permits three or more communities to obtain insurance for an amount equal to the probable maximum loss (PML) for a 250-year windstorm event, but requires that the Office of Insurance Regulation review and approve rates and policy forms, that unit owners obtain accurate disclosures and that hurricane loss models are accurate and appropriately applied to the insured condominium structures.

The bill provides the procedures for a board meeting to establish the amount of deductibles. It specifies the property that must be excluded from the association's insurance coverage, and specifies the provisions that must be contained in every hazard insurance policy issued or renewed on or after January 1, 2009 to an individual unit owner. The bill requires that improvements or additions which do not benefit all of the unit owners must be insured by the unit owner or owners who use the improvement or addition. It also requires unit owners to provide to the condominium association evidence of a currently effective hazard and liability

insurance policy no more than once per year. If the unit owner fails to provide the evidence of insurance within 30 days, the association may purchase an insurance policy on behalf of the unit owner, which the unit owner must pay for. The bill specifies the obligations of the condominium association and the unit owner for reconstruction and repair work and their cost. The bill provides that any expenses required by government, including fire safety equipment and water and sewer service, are common expenses. The bill modifies provisions regarding the furnishing of estoppel certificates by condominium associations and by homeowners' associations.

The bill repeals ch. 498, F.S., to end the regulation of subdivided land sales by the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR or department). The bill amends s. 20.165, F.S., to rename the division as the Division of Florida Condominiums, Timeshares, and Mobile Homes. It also renames the department's Division of Technology, Licensure, and Testing as the Division of Technology. The bill transfers selected powers of the division that are contained in ch. 498, F.S., to ch. 718, F.S. The bill permits the department, on behalf of the boards under its jurisdiction, to close and to terminate license applications two years after the board or the department has notified the applicant of the deficiency, and to approve applications for professional licenses that meet all statutory and rule requirements for licensure. It clarifies exemptions for mold assessor licensure.

The bill increases the experience requirement for real estate brokers from 12 months to 24 months and deletes the requirement for real estate schools to submit course rosters to the department. It eliminates the requirement for farm labor contractors to file fingerprints with the department. The bill permits applicants for the electrical and alarm system contractors' certification examination to take the examination before the Electrical Contractor's Licensing Board has reviewed the applicant's experience and training qualifications. The bill authorizes amateur mixed martial arts events in Florida. It requires, before licensure, that participants in boxing and mixed martial arts matches have competed in the minimum number of competitions required for licensure are determined by rule of the Boxing Commission. It exempts persons who sell or offer for sale manufactured and factory built buildings from the construction contracting licensure requirements of ch. 489, F.S.

The bill provides an effective date of July 1, 2008.

This bill substantially amends the following sections of the Florida Statutes: 20.165, 73.073, 190.009, 192.037, 213.053, 215.20, 326.002, 326.006, 380.05, 380.06, 380.0651, 381.0065, 450.33, 455.116, 455.203, 455.217, 455.2273, 468.841, 475.17, 489.105, 475.451, 475.455, 489.511, 489.515, 494.008, 509.512, 517.301, 548.0065, 548.008, 548.041, 559.935, 718.103, 718.105, 718.111, 718.115, 718.116, 718.117, 718.1255, 718.5011, 718.501, 718.502, 718.504, 718.508, 718.509, 718.608, 719.103, 719.1255, 719.501, 719.502, 719.504, 719.508, 719.608, 720.301, 720.401, 721.03, 721.05, 721.07, 721.08, 721.26, 721.28, 721.301, 721.50, 723.003, 723.006, 723.009, and 723.0611. This bill creates the following sections of the Florida Statutes: 718.50152, 718.50154, 718.50155, and 720.30851. This bill repeals Chapter 498 of the Florida Statutes, consisting of the following sections: 498.001, 498.003, 498.005, 498.007, 498.009, 498.011, 498.013, 498.017, 498.019, 498.021, 498.022, 498.023, 498.024, 498.025, 498.027, 498.028, 498.029, 498.031, 498.033, 498.035, 498.037, 498.039, 498.041, 498.047, 498.049, 498.051, 498.053, 498.057, 498.059, 498.061, and 498.063.

II. Present Situation:

Condominium Background

A condominium is a "form of ownership of real property created pursuant to this chapter, 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] Condominiums are regulated by the Division of Florida Land Sales, Condominiums, and Mobile Homes ("division") of the Department of Business and Professional Regulation ("DBPR" or "department"), in accordance with ch. 718, F.S.

Pooling of Condominium Associations to Secure Windstorm Insurance

In 2007, the Legislature enacted a provision which specified what constituted "adequate windstorm insurance" under the condominium law for a group of at least three communities operating as residential condominiums (ch. 718, F.S.), cooperatives (ch. 719, F.S.), homeowners' associations (ch. 720, F.S.), or timeshare entities (ch. 721, F.S.).[2] The law provided that these entities could pool their resources to obtain and maintain windstorm insurance coverage if such coverage was sufficient to cover an amount equal to the probable maximum loss (PML) for such communities for a 250-year windstorm event. The PML must be determined through the use of a competent model that has been accepted by the Florida Commission on Hurricane Loss Projection Methodology.[3]

The law did not amend or change any requirements for regulation of insurance policies by the Office of Insurance Regulation (OIR). Currently, property insurance policies sold by authorized insurers (i.e., insurers that have a certificate of authority issued by the OIR) are subject to approval of rates and policy forms. However, policies issued by surplus lines insurers are not subject to approval of rates and forms. Surplus lines insurers must be approved by OIR as "eligible" by meeting certain financial requirements. In general, an insurance agent cannot place business with a surplus lines insurer without documenting that coverage is unavailable from an authorized insurer.[4] As a result of the 2007 legislation, some surplus lines insurers have written condominium association insurance policies with policy limits below the total value of the association properties. Representatives with Willis Group, an insurance broker, state that as of April 2008, their surplus lines companies have written one group insurance policy for approximately eighty condominium associations in the Tampa-St. Petersburg area. The coverage limits are approximately $100 million, which is about 10 percent of the total value of the association properties of approximately $1 billion, but the $100 million amount is equal to the PML for a 250-year windstorm event, according to these representatives. Willis uses the RMS

[1] Section 718.103(11), F.S.

[2] Chapter 2007-1, L.O.F. (HB 1A was passed during Special Session A and amended s. 718.111(11)(a)1., F.S.).

[3] Established in 1995, the Florida Commission (Commission) on Hurricane Loss Projection Methodology's role is to adopt findings relating to the accuracy or reliability of the methods, standards, models and other means used to project hurricane losses. Its members include experts in insurance, finance, statistics, computer system design, and meteorology. The Commission sets standards for loss projection methodology and examines the methods employed in proprietary hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission standards. The law provides that an insurer may use in its rate filing hurricane loss models found by the commission to be accurate or reliable and that such findings are admissible and relevant only if OIR and the consumer advocate appointed by DFS have access to all of the assumptions and factors that were used in developing the model and are not precluded from disclosing such information in a rate proceeding. The Commission has approved five models.

[4] Surplus lines insurers are not required to have their rates or forms approved by the OIR under ss 626.913-626.937, F.S.

(Risk Management Solutions) hurricane model which has been approved by the Florida Commission on Hurricane Loss Projection Methodology.

Officials with the Office of Insurance Regulation (OIR) have expressed concern with condominium association windstorm insurance policies that do not provide coverage for the total value of the association property. The OIR has concerns that these policies do not provide sufficient, clear disclosures to the unit owners as to the terms and conditions of coverage, including any limits of coverage below the total value of the association property, or the risk assumed by the unit owners should their coverage be inadequate. If coverage is inadequate, unit owners would be charged with assessments after a hurricane occurs. Currently, policy forms are often distributed to unit owners only after an association board approves the insurance policy, according to these officials.

Condominium Unit Owner Responsibilities-Plaza East Decision

In January 2006, the division issued a Declaratory Statement in the petition filed by *Plaza East Condominium Association (Plaza East)*.[5] The Petition requested an opinion as to whether *Plaza East* may pass on to the unit owner the cost of repairing those items that would have otherwise been paid for by the association's insurance policy, but for the application of the deductible or amounts in excess of the coverage limits, notwithstanding provisions in the declaration defining the condominium property as part of a unit with the cost of repairs to be paid for by the unit owner. *Plaza East* acknowledged it is required to insure the condominium property located outside the units, the property inside the units as initially installed, and all portions of the condominium property requiring coverage by the association under s. 718.111(11), F.S.

The division concluded that although the declaration of condominium required that the unit owner was responsible to pay for repairs if the damage was to the portions of the unit that the unit owner was required to maintain, in *Plaza East*, the division decided that the condominium association could not shift the cost of the deductible, a common expense, to only those unit owners whose property was damaged by the insurable event such as a hurricane. The division stated that the owners of the damaged units had paid their proportionate share of the insurance to replace the damaged property, and that it was unfair to shift the risk and liability to the individual unit owners for the damages. It is also noted that holding individual unit owners liable is inconsistent with the assignment of insurable risk in s. 718.111(11), F.S.

According to representatives with condominium associations, the *Plaza East* decision was contrary to how the law had been interpreted previously and has created confusion among condominium associations and unit owners. Historically, condominium declarations have unilaterally allocated the risk of uninsured losses to the unit owner in control of the damaged property and not the association. Legislation is needed, argue these representatives, to clarify what are or are not considered to be common expenses payable by all condominium unit owners in the event of reconstruction following a casualty.

[5] *In Re: Petition for Declaratory Statement Plaza East Association, Inc.*, Division of Florida Land Sales, Condominiums and Mobile Homes Declaratory Statement 2005-055, Docket No. 2005 059934, Department Final Order No. DBPR-2006-00239, January 13, 2006. ("*Plaza East*").

OIR Report on Condominium Insurance

Legislation enacted in 2003 amended s. 718.111(11), F.S., to require the OIR to prepare for publication 18 months from the effective date of the act a report evaluating premium increases or decreases for associations, unit owner premium increases or decreases, recommended changes to better define common areas, or any other information the OIR deems appropriate.[6] In November 2004, the OIR published its report which concluded that premiums had increased over the past few years at a "moderate rate."[7] The report also found that the insuring responsibilities for condominium property are generally clear and recommended that the 2003 legislative changes to the condominium insurance provision be allowed to fully impact the marketplace. Finally, OIR recommended that enhanced consumer outreach programs be instituted to facilitate continued insurer entrance into the admitted market and improved education of the insurance buying public.

Other Insurance Provisions

Section 718.111(11)(a), F.S., provides that it is a breach of fiduciary responsibility by an association's developer-appointed board of directors to fail to obtain and maintain adequate insurance during any period of developer control, unless the board members can show that despite such failure, they have exercised due diligence.

Section 718.111(11)(a), F.S., also provides that the declaration of condominium may require that condominium property consisting of freestanding buildings where there is no more than one building in or on such unit need not be insured by the association if the declaration requires the unit owner to obtain adequate insurance for the condominium property. This provision relates to what is known as "land condominiums." A "land condominium" is composed of separate parcels of land. The units are the separate parcels. Each unit may have one or more buildings in or on each parcel.

Section 718.111(11)(a), F.S., also authorizes condominium associations to obtain and maintain liability insurance for directors and officers, insurance for the benefit of association employees, and flood insurance for common elements, association property, and units.

Section 718.111(11)(a), F.S., provides that "adequate insurance" may include reasonable deductibles as determined by the board based upon available funds or predetermined assessment authority at the time that the insurance is obtained. Associations may have a reasonable deductible even if the declaration of condominium requires coverage by the association for "full insurable value," "replacement cost," or the like. Section 718.111(11)(a), F.S., also permits condominium boards to consider available funds or predetermined assessment authority when determining whether they have the statutorily required "adequate insurance."

Section 718.111(11)(a)2., F.S., permits an association or group of associations to self-insure against claims against the association, the association property, and the condominium property required to be insured by an association. To provide self-insurance the association or associations must comply with the applicable self-insurance provisions of ss. 624.460-624.488, F.S. It also

[6] Chapter 2003-14, L.O.F. (SB 592)
[7] Florida Office of Insurance Regulation, *Condominium Insurance Report*, November 19, 2004.

provides that such self-insurance is considered adequate insurance. A copy of each policy of insurance in effect must be made available for inspection by unit owners at reasonable times.

Section 718.111(11)(b), F.S., provides that every hazard insurance policy issued or renewed on or after January 1, 2004, to protect the condominium shall provide primary coverage for:

1. All portions of the condominium property located outside the units;
2. The condominium property located inside the units as such property was initially installed, or replacements thereof of like kind and quality and in accordance with the original plans and specifications or, if the original plans and specifications are not available, as they existed at the time the unit was initially conveyed; and
3. All portions of the condominium property for which the declaration of condominium requires coverage by the association.

Section 718.111(11)(b), F.S., provides that:

> Anything to the contrary notwithstanding, the terms "condominium property," "building," "improvements," "insurable improvements," "common elements," "association property," or any other term found in the declaration of condominium which defines the scope of property or casualty insurance that a condominium association must obtain shall exclude all floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a unit and serve only one unit and all air conditioning compressors that service only an individual unit, whether or not located within the unit boundaries.

Section 718.111(11)(b), F.S., further clarifies that this exclusion is intended to establish the property or casualty insuring responsibilities of the association and those of the individual unit owner and do not serve to broaden or extend the perils of coverage afforded by any insurance contract provided to the individual unit owner.

Section 718.111(11)(b), F.S., provides that, beginning January 1, 2004, condominium associations are authorized to amend the declaration of condominium, without regard to any requirement for mortgagee approval of amendments affecting insurance requirements, to conform the declaration of condominium to the coverage requirements of this section.

Regarding the individual unit owners hazard insurance responsibilities, s. 718.111(11)(c), F.S., provides that:

> Every hazard insurance policy issued or renewed on or after January 1, 2004, to an individual unit owner must provide that the coverage afforded by such policy is excess over the amount recoverable under any other policy covering the same property. Each insurance policy issued to an individual unit owner providing such coverage shall be without rights of subrogation against the condominium association that operates the condominium in which such unit owner's unit is

> located. All real or personal property located within the boundaries of the unit owner's unit which is excluded from the coverage to be provided by the association as set forth in paragraph (b) shall be insured by the individual unit owner.

Section 718.111(11)(d), F.S., requires that the association obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the association. It provides that insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. It defines the term "persons who control or disburse funds of the association" to include, but is not limited to, those individuals authorized to sign checks and the president, secretary, and treasurer of the association. The association is required to bear the cost of bonding.

Condominium Common Expenses

Section 718.115(1)(a), F.S., provides, in pertinent part that the common expenses of a condominium association include:

> The expenses of the operation, maintenance, repair, replacement, or protection of the common elements and association property, costs of carrying out the powers and duties of the association, and any other expense, whether or not included in the foregoing, designated as common expense by this chapter, the declaration, the documents creating the association, or the bylaws. Common expenses also include reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house communications, and security services, which are reasonably related to the general benefit of the unit owners even if such expenses do not attach to the common elements or property of the condominium.

Section 718.115(1)(a), F.S., also provides that these common expenses must either have been services or items provided on or after the date control of the association is transferred from the developer to the unit owners or must be services or items provided for in the condominium documents or bylaws.

Assessments for Condominiums

Section 718.103(1), F.S., defines an "assessment" as the "share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner."

Section 718.116(8), F.S., requires that a condominium association must provide a certificate signed by an officer or agent of the association which states all assessments and other monies which are owed to the association by the unit owner. This certificate, also known as an "estoppel certificate," must be provided within 15 days of receipt of a written request from a unit owner or unit mortgagee. The association or its agent may charge a reasonable fee for the preparation of the certificate.

Termination of Condominium

Section 718.117, F.S., provides procedures for the termination of condominiums. Section 718.117(17), provides for the distribution of proceeds from the sale of any condominium property or association property and any remaining condominium property or association property, common surplus, and other assets must be distributed in the following priority. It requires distribution in the following priority:

- To pay the reasonable termination trustee's fees and costs.
- To lienholders of liens recorded prior to the recording of the declaration.
- To purchase-money lienholders on units to the extent necessary to satisfy their liens.
- To lienholders of liens of the association which have been consented to under s. 718.121(1), F.S.
- To creditors of the association as their interests appear.
- To unit owners, the proceeds of any sale of condominium property subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or a lienor.
- To unit owners, the remaining condominium property, subject to satisfaction of liens on each unit in their order of priority, unless objected to by a unit owner or a lienor.
- To unit owners, the proceeds of any sale of association property, the remaining association property, common surplus, and other association assets, subject to satisfaction of liens on each unit in their order of priority, unless objected to by a unit owner or lienor.

Assessments of Homeowners' Associations

A homeowners' association is a "Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel."[8] Homeowners' associations are regulated under ch. 720, F.S.

In order to fund the operations, amenities, and special needs of a homeowners' association, each parcel owner is required to contribute a proportionate share of the costs and expenses.[9] Each owner's proportionate share of the annual budget and the general operations of the association are referred to as an assessment.[10] Section 720.308, F.S., provides that the governing documents must describe the manner in which expenses are shared and specify the member's proportional share thereof.

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (DBPR or department) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.[11] The department is created in s. 20.165, F.S., and has ten divisions.[12]

[8] Section 720.301(9), F.S.
[9] Dunbar, *supra* note 2, s. 1.9, at 10.
[10] *Id.*
[11] Chapter 93-220, L.O.F.
[12] Section 20.165, F.S., creates the following divisions in the DBPR: (1) Administration; (2) Alcoholic Beverages and Tobacco; (3) Certified Public Accounting; (4) Florida Land Sales, Condominiums, and Mobile Homes; (5) Hotels and

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the department, specifically the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

In addition to administering the professional boards, the department processes applications for licensure and license renewal. The department also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Division of Florida Land Sales, Condominiums, and Mobile Homes (division) is created by s. 20.165(2)(d), F.S.. The division administers the provisions of ch. 498, F.S., relating to land sale practices, ch. 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, ch. 721, F.S., relating to vacation plans and timesharing, and ch. 723, relating to mobile homes. The division also conducts mediation for certain homeowners' association disputes under ch. 720, F.S.

Land Sales Practices

Chapter 498, F.S., provides for the administration of the provisions of Florida's Uniform Land Sales Practices Act by the division. Chapter 498, F.S., regulates the offer and disposition of subdivided lands to the public. This registration program is designed to protect consumers from fraud and abuse in the sale or lease of vacant subdivided lands.[13] Primary funding for the program is provided by the collection of an annual renewal fee from each subdivider who has been issued a license to sell subdivided lands.[14]

Section 498.005(20), F.S., defines the term "subdivider" to mean "a person who owns any interest in subdivided lands or is engaged in the disposition of subdivided lands either directly, indirectly, or through the services of an employee, agent, or independent contractor."

Section 498.005(21), F.S., defines the terms "subdivision" or "subdivided lands" to mean:

> (a) Any contiguous land which is divided or is proposed to be divided for the purpose of disposition into 50 or more lots, parcels, units, or interests; or
> (b) Any land, whether contiguous or not, which is divided or proposed to be divided into 50 or more lots, parcels, units, or interests which are offered as a part of a common promotional plan.

Section 498.023, F.S., prohibits the sale of subdivided lands without first registering with the division. Section 498.017, F.S., sets a registration base fee of $450 per subdivision registration application plus a fee of $4 for each of the first 2,000 lots, parcels, units, or interests in the subdivision. It also provides a fee of $2 for each additional lot, parcel, unit, or interest. Each registration may be renewed annually with a base fee of $300.

Restaurants; (6) Pari-mutuel Wagering; (7) Professions; (8) Real Estate; (9) Regulation; and (10) Technology, Licensure, and Testing.

[13] *See* s. 498.003, F.S.

[14] *See* s. 498.017, F.S.,

Regarding the regulation of land sales practices and the division's responsibilities under ch. 498, F.S., the division has reported:

> Currently, most sellers are either exempt or are under the jurisdiction of the federal Interstate Land Sales Act[15] regulated by [the U.S. Department of Housing and Urban Development]. Few Florida sellers restrict themselves to only offering subdivided land intrastate. The same is true of the re-sale of subdivided land with many of the offerings being made on the Internet. The division has seen a steady decline in new Florida subdivisions being registered since the passage of the laws requiring county comprehensive plans. Counties now require that the necessary infrastructure be in place in new subdivisions prior to final county approval and counties now require that assurances, e.g. bonds or letters of credit, be posted to assure completion of infrastructure—heretofore a responsibility of the division under Chapter 498, F.S. Currently, the division (LSC) holds no bonds or letters of credit assuring the completion of subdivision infrastructure. During fiscal year 2006-2007, and in the year to date through 12/31/2007, three (3) sellers have registered with the division lots in six (6) Florida subdivisions. Three (3) sellers have registered eleven (11) out-of-state subdivisions. Only one (1) seller has registered a new in-state subdivision, an RV park.

The department states that "The need for state regulation of the land sales industry is reduced due in part by increased regulation of new developments by local government and the federal regulation of interstate land sales."

Farm Labor Contractor Registration

Section 450.30, F.S., requires that a person must obtain a certificate of registration with the department before acting as a farm labor contractor. Section 450.28(1), F.S., defines the term "farm labor contractor" to mean:

> (a) Any person who, for a fee or other valuable consideration, recruits, transports into or within the state, supplies, or hires at any one time in any calendar year one or more farm workers to work for, or under the direction, supervision, or control of, a third person; or
> (b) Any person who recruits, transports into or within the state, supplies, or hires at any one time in any calendar year one or more farm workers and who, for a fee or other valuable consideration, directs, supervises, or controls all or any part of the work of such workers.

Section 450.33(8), F.S., requires that a person acting as a farm labor contractor must file, within such time as the department may prescribe,[16] a set of his or her fingerprints.

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[15] *See* 15 U.S.C. 1701 et seq. The Interstate Land Sales Full Disclosure Act was enacted in 1968. It requires land developers to register subdivisions of 100 or more non-exempt lots with HUD and to provide each purchaser with a disclosure document called a "Property Report." Information about the act is available at the Internet site for HUD located at: http://www.hud.gov/offices/hsg/sfh/ils/ilshome.cfm (Last visited March 20, 2008).

[16] Rule 61L-1.004(4), F.A.C., requires that applicants for the issuance or renewal of a certificate must submit a fingerprint identification card (Form FD-258), and that applicants for renewal must submit the card every three years after the initial application.

Mold Assessors and Remediators

Part XVI of Chapter 468, F.S., provides requirements for the licensure and regulation of mold assessment and remediation.

Section 468.8411(3), F.S., defines "mold assessment" to mean:

> A process performed by a mold assessor that includes the physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location, and extent of amplification of mold growth of greater than 10 square feet.

Section 468.8411(4), F.S., defines "mold assessor" to mean "any person who performs or directly supervises a mold assessment."

Section 468.8411(5), F.S., defines "mold remediation" to mean:

> The removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter of greater than 10 square feet that was not purposely grown at that location; however, such removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, may not be work that requires a license under Chapter 489 unless performed by a person who is licensed under that Chapter or the work complies with that chapter.

Section 468.8411(6), F.S., defines "mold remediator" to mean any person who performs mold remediation. The definition also provides that a mold remediator may not perform any work that requires a license under ch. 489, F.S., unless the mold remediator is also licensed under that Chapter or complies with that chapter.

Section 468.841, F.S., provides the following exemptions from regulation and licensure under part XVI of Chapter 468, F.S.:

- A residential property owner who performs mold assessment on his or her own property.
- A person who performs mold assessment on property owned or leased by that person, the person's employer, or an affiliate of the employer as long as the persons are not engaging in the business of performing mold assessment for the public.
- A full-time employee engaged in routine maintenance of public and private buildings, structures, and facilities, which does not otherwise hold him/her out for hire.
- Employees of mold assessors and remediators while directly supervised by the mold assessor or remediator.
- Division I and Division II contractors licensed under ch. 489, F.S.
- Engineers licensed under ch. 471, F.S., unless they hold themselves out for hire to the public as a "certified mold remediator," "registered mold remediator," "licensed mold remediator," "mold remediator," "professional mold remediator."
- Architects and interior designers licensed under part I of ch. 481, F.S.
- Pest control organizations and persons licensed pursuant to ch. 482, F.S.

- Persons acting on behalf of an insurer pursuant to part VI of ch. 626, F.S., when acting within the scope of their licenses and not holding themselves out to the public as mold assessors or words to that effect.
- Individuals working in the manufactured housing industry licensed under ch. 320, F.S.
- Authorized employees of the United States, the State of Florida, or any municipality, county, or other political subdivision, or public or private school.

Section 468.8412, F.S., provides the department with rule authority for application, examination, reexamination, licensing, and renewal fee. The application and examination fees each have a $125 cap, plus a per applicant cost the department may add to the examination fee if the department purchases the examination. The fee for an initial license and certificate of authorization may not exceed $200. The biennial license renewal and certificate of authorization may not exceed $400. The fee for licensure by endorsement and reactivation of an inactive license may not exceed $200. The fee for application for inactive status may not exceed $100. The application fee from providers of continuing education may not exceed $500.

Construction Contracting

Chapter 489, F.S., provides for the regulation of construction contracting.

Section 489.105(6), F.S., defines the term "contracting to mean:

> Engaging in business as a contractor and includes, but is not limited to, performance of any of the acts as set forth in subsection (3) which define types of contractors. The attempted sale of contracting services and the negotiation or bid for a contract on these services also constitutes contracting. If the services offered require licensure or agent qualification, the offering, negotiation for a bid, or attempted sale of these services requires the corresponding licensure.

Section 498.105(6), F.S., further provides that the term "contracting" does not extend to:

> An individual, partnership, corporation, trust, or other legal entity that offers to sell or sells completed residences on property on which the individual or business entity has any legal or equitable interest, if the services of a qualified contractor certified or registered pursuant to the requirements of this Chapter have been or will be retained for the purpose of constructing such residences.

Florida State Boxing Commission

The Florida State Boxing Commission (commission) is created and assigned to the Department of Business and Professional Regulation by s. 548.003, F.S. The commission consists of five members who are appointed by the Governor subject to Senate confirmation. The commission is the agency responsible for the enforcement of ch. 548, F.S., relating to the regulation of pugilistic exhibitions. Section 548.001, F.S., provides that the provisions constituting ch. 548, F.S., shall be known and may be cited as the "Joe Lang Kershaw Act."[17]

Section 548.006(1), F.S., grants the commission exclusive jurisdiction over every match held within the state which involves a professional, including boxing, kickboxing, and mixed martial arts. The commission has exclusive jurisdiction of all amateur sanctioning organizations of amateur boxing and kickboxing matches. Section 548.006(4), F.S., also provides that

[17] In 1968, Joe Lang Kershaw became the first African-American elected to the Florida Legislature in the 20th Century.

professional and amateur matches shall be held in accordance with ch. 548, F.S., and the rules adopted by the commission.

Chapter 548, F.S., requires the licensure or permits for promoters,[18] and foreign co-promoters[19]. A permit is also required for any participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, concessionaire, or booking agent or representative of a booking agent.[20] The physician must be licensed pursuant to ch. 458, F.S., or ch. 459, F.S. (pertaining to automobile race meets), the license must be in good standing, and the physician must have medical training or experience in boxing.

Section 548.002(1), F.S., defines the term "amateur" to mean:

> a person who has never received nor competed for any purse or other article of value, either for expenses of training or for participating in a match, other than a prize of $50 in value or less.

Section 548.002(2), F.S., defines the term "amateur sanctioning organization" to mean "any business entity organized for sanctioning and supervising matches involving amateurs."

Section 548.002(3), F.S., defines the term "boxing" to mean a competition with fists.

Section 548.002(6), F.S., defines the term "contest" to mean:

> a boxing, kickboxing, or mixed martial arts engagement in which the persons participating strive earnestly to win using, but not necessarily being limited to, strikes and blows to the head.

Section 548.002(8), F.S., defines the term "exhibition" to mean:

> a boxing, kickboxing, or mixed martial arts engagement in which the persons participating show or display their skill without necessarily striving to win using, but not necessarily being limited to, strikes and blows to the head.

Section 548.002(11), F.S., defines the term "kickboxing" to mean "… to compete with the fists, feet, legs, or any combination thereof, and includes "punchkick" and other similar competitions."

Section 548.002(15), F.S., defines the term "mixed martial arts" to mean:

> unarmed combat involving the use, subject to any applicable limitations set forth in this chapter, of a combination of techniques from different disciplines of the martial arts, including, but not limited to, grappling, kicking, and striking.

[18] Section 548.012, F.S.
[19] Section 548.013, F.S.
[20] Section.548.017, F.S.

Section s. 548.0065, F.S., provides the standards and requirements for the regulation of amateur matches by the commission.

Timeshares
Chapter 721, F.S., provides for the regulation of timeshares. Section 721.03(1)(c), F.S., specifies requirements for all timeshare plans located outside of Florida but offered for sale in the state. Section 721.03(1)(c)5., F.S., provides that:

> Notwithstanding any other provision of this paragraph, the offer, in this state, of an additional interest to existing purchasers in the same timeshare plan or the same component site of a multisite timeshare plan with accommodations and facilities located outside of this state shall not be subject to the provisions of this Chapter if the offer complies with the provisions of s. 721.11(4), F.S.

III. Effect of Proposed Changes:

Insurance
The bill amends s. 718.111(11), F.S., to revise and clarify the insurance requirements for condominiums. The bill eliminates a requirement mandated in 2003 that the OIR report and prepare for publication 18 months from the effective date of s. 718.111(11), F.S., an evaluation of the premium increases and decreases for condominium associations and unit owners, including the OIR's recommendations.[21]

Section 718.111(11)(a), F.S., maintains the current requirement for adequate insurance but uses the term "adequate hazard insurance" to specify the type of insurance that is required. It provides that adequate hazard insurance be based on the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The full insurable value must be determined at least every 36 months. Adequate hazard insurance is based upon the replacement cost of the property regardless of "full insurable value," "replacement cost," or similar language in the declaration of condominium.

Section 718.111(11)(a)1., F.S., permits condominium associations to provide adequate hazard insurance through a self-insurance fund that complies with ss. 624.460-624.488, F.S. The bill deletes the provision that permits condominium associations to self-insure against claims against the association, the association property, and the condominium property required to be insured by an association. The bill also deletes the requirement that the association must make a copy of the policy available for inspection by the unit owners at reasonable times.

Section 718.111(11)(a)2., F.S., maintains the current provision that permits three or more communities to obtain insurance for an amount equal to the PML for a 250-year windstorm event as determined through the use of a competent model that has been accepted by the Florida Commission on Hurricane Loss Projection Methodology. The bill requires that any policy providing such insurance coverage issued after July 1, 2008, must be reviewed and approved by the OIR, as follows:

[21] Chapter 2003-14, L.O.F.

- Approval of the policy and related forms pursuant to ss. 627.410 and 627.411, F.S.;
- Approval of the rates pursuant to s. 627.062, F.S.;
- A determination that the loss model approved by the Commission was accurately and appropriately applied to the insured structures to determine the 250-year probable maximum loss; and
- A determination that complete and accurate disclosure of all material provisions is provided to condominium unit owners prior to execution of the agreement by a condominium association.

The requirement for approval of forms and rates is required under current law if the policy is sold by an authorized (Florida licensed) insurer, but this would be a new regulatory requirement for a surplus lines insurer selling this product. The additional requirements of a determination by OIR that the loss model was accurately and appropriately applied and that a complete and accurate disclosure has been provided to unit owners, are new requirements, whether sold by an authorized insurer or a surplus lines insurer.

Section 718.111(11)(a)3., F.S., maintains the current provision that permits condominium associations to consider deductibles when determining the adequate amount of hazard insurance coverage. However, the bill deletes the provision that the policy may include a deductible regardless of any requirement in the declaration of condominium for coverage by the association for "full insurable value," "replacement cost," or the like.

Section 718.111(11)(b), F.S., changes the current requirement for developer-controlled associations to exercise due diligence to obtain and maintain insurance. The bill requires that the developer-controlled association must exercise its "best efforts" to obtain and maintain insurance. Failure to obtain and maintain adequate hazard insurance during any period of developer control would constitute a breach of the fiduciary responsibility of the developer-appointed board members, unless the members can show that they made the best efforts to acquire coverage even if they failed.

Section 718.111(11)(c), F.S., maintains the current requirement that policies may include deductibles as determined by the board. The bill requires that insurance deductibles must be consistent with industry standards and the prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the condominium property is situated. It permits the association board to determine the deductible on the basis of available funds, including reserve amounts, or predetermined assessment authority at the time the insurance is obtained, when determining adequate insurance.

Section 718.111(11)(c)3., F.S., provides the procedures for board meetings for establishing the amount of deductibles based upon the level of available funds and predetermined assessment authority at a meeting of the board. The bill requires that the meeting must be open to all members. The bill requires that the meeting notice must:

- State the proposed deductible and the available funds;
- State the assessment authority relied upon by the board; and
- Estimate any potential assessment amount against each unit, if any.

The bill permits the meeting to be held in conjunction with a meeting to consider the proposed budget or budget amendment.

Section 718.111(11)(d), F.S., maintains the current requirement for unit-owner controlled associations to exercise their best efforts to obtain and maintain insurance required by this subsection. Section 718.111(11)(e), F.S., maintains the current provision that permits associations for land condominiums to not obtain insurance if the unit owners are required to obtain adequate insurance. Section 718.111(11)(e), F.S., also maintains the current provision that permits the association to obtain and maintain liability insurance for directors and officers, insurance for the benefit of association employees, and flood insurance for common elements, association property, and units. Section 718.111(11)(f), F.S., specifies the following primary coverage that every hazard insurance policy issued on or after January 1, 2009 must provide:

- All original or replaced portions of the condominium property; and
- All alterations or additions made to the condominium property or association property pursuant to s. 718.113(2), F.S.[22]

The bill deletes the requirement that primary coverage must be for all portions of the condominium property located outside the units. The bill deletes the current requirement in s. 718.111(11)(b)2., F.S., for primary coverage for condominium property inside the units. The bill also deletes the current requirement in s. 718.111(11)(b)3., F.S., for primary coverage for all portions of the condominium property for which the declaration of condominium requires coverage by the association.

Section 718.111(11)(f)3., F.S., specifies the property that must be excluded from the association's insurance coverage. The bill maintains most of the exclusions in current law and also requires that all personal property within the unit or limited common elements must be excluded from the coverage. The bill deletes the exclusion in current law for air conditioner or heating units. The bill deletes the provision that excludes all of the specified properties that are located within the boundaries of a unit and serve only one unit. It also deletes the exclusion for all air conditioning compressors that service only an individual unit, whether or not located within the unit boundaries.

Section 718.111(11)(g), F.S., specifies the provisions that must be contained in every hazard insurance policy issued or renewed on or after January 1, 2009 to an individual unit owner. The bill requires that an individual unit owner must include special assessment coverage of not less than $2,000 per occurrence. An insurance policy issued to an individual unit owner providing coverage does not provide rights of subrogation against the condominium association.

Section 718.111(11)(g)1., F.S., requires that improvements or additions which do not benefit all of the unit owners must be insured by the unit owner or owners who use the improvement or addition. Alternatively, the bill permits the association to insure the improvements or additions at the expense of the unit owners who use them.

[22] Section 718.113(2), F.S., provides for the alteration or substantial additions to the common elements or to real property which is association property.

Section 718.111(11)(g)2., F.S., requires the unit owners to provide evidence of a currently effective hazard and liability insurance policy upon request by the association. The association can not require evidence of insurance more than once per year. If the unit owner fails to provide the evidence of insurance within 30 days, the association may purchase an insurance policy on behalf of the unit owner. The unit owner is responsible for the cost of the policy and for any reconstruction costs incurred by the association. These costs may be collected as assessments under s. 718.116, F.S.[23]
Section 718.111(11)(g)3., F.S., provides that the association shall undertake all reconstruction work after a casualty loss. The unit owner may only undertake reconstruction work if he or she has the written consent of the board of administration, and the board must approve the repair methods, qualifications of the contractor, or the contract for repair. The bill requires that the unit owner obtain all required governmental permits and approvals before beginning any reconstruction.

Section 718.111(11)(g)4., F.S., provides that unit owners are responsible for reconstruction costs of any part of property for which they must have casualty insurance. The association may charge the unit with an enforceable assessment under s. 718.116, F.S., for any work the association has undertaken. The bill requires that the association must be an additional named insured and loss payee on all casualty insurance policies of unit owners.

Section 718.111(11)(g)5., F.S., provides that multicondominium associations may elect to operate as one condominium by majority vote for insurance purposes including, but not limited to, hazard insurance and the apportionment of deductibles and damages that exceed coverage. The election to do this must be treated as an amendment to the declaration of all the condominiums involved and recorded according to s. 718.110, F.S.[24] Furthermore, the cost of insurance must be placed in the association budget.

Section 718.111(11)(h), F.S., maintains the current requirement for insurance or fidelity bonding of all persons who control or disburse funds of the association.[25]

Section 718.111(11)(i), F.S., maintains the current provision that permits the association to amend the declaration of the condominium without regard to any requirement for mortgagee approval of amendments affecting insurance requirements.[26]

Section 718.111(11)(j)2., F.S., provides that any portion of condominium property, which is required to be insured for casualty loss by the association, that is damaged by casualty must be reconstructed, repaired or replaced as necessary by the association as a common expense. Hazard insurance, deductibles, uninsured losses, and other damages in excess of hazard insurance coverage are also common expenses. However, the bill provides the following exceptions:

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[23] Section 718.116, F.S , authorizes condominium associations to place a lien on the condominium unit for failure to pay the assessment. It also provides for interest, if the declaration or bylaws so provide, to accrue at the rate of 18 percent per year, and for late fees not to exceed the greater of $25 or 5 percent.
[24] Section 718.110, F.S., provides that if the declaration does not provide for the process of amending, then it can be amended if approved by more than four-fifths of the voting interests.
[25] *See* s.718.111(11)(d), F.S., (2007).
[26] See s.718.111(11)(b), F.S., (2007).

- A unit owner is responsible for the cost of repair or replacement of condominium property which is not paid by insurance when damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or association rules by a unit owner, his or her family, tenants, guests or invitees. The unit owner is also without subrogation rights.
- The unit owner is also financially responsible for the cost of repair or replacement of personal property of another unit owner or the association when the damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or association rules.
- If the unit owner is reimbursed by insurance proceeds that go to the association, then the association must reimburse the unit owner without a waiver of any subrogation rights.
- The association is not obligated to pay for reconstruction or repayment of casualty losses when losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim had been settled or denied by the insurance company because it was untimely filed.

Section 718.111(11)(k), F.S., permits associations to opt out of the provisions for allocation of repair or reconstruction expenses in s. 718.111(j), F.S., if the majority of the total voting interests[27] in the association approve. The association may instead allocate repairs or reconstruction costs in the manner provided in the declaration as originally recorded or as amended. The vote may be approved by voting interests of the association without regard to any mortgagee consent requirements.

Section 718.111(11)(l), F.S., permits any condominium in a multicondominium association that has not consolidated its financial operations under s. 718.111(6), F.S.,[28] to opt out of the provisions in s. 718.111(11)(j), F.S., with the approval of the majority of total voting interests in that condominium. Such a vote may be approved by the voting interests without regard to any mortgagee consent requirements.[29]

Section 718.111(11)(m), F.S., requires that any association or condominium voting to opt out of the provision in s. 718.111(11)(j), F.S., to record the notice with the date of the opt-out vote and the official records book and page where the declaration is recorded. The opt-out is effective on the date of recording of notice in public records of the association. An association that has opted out may reverse that decision by the same majority vote required for the opt-out and record the notice in the official records.

Section 718.111(11)(n), F.S., provides that an association is not obligated to pay for reconstruction or repair costs due to casualty loss for any improvements installed by a current or

[27] 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."

[28] Section 718.111(6), F.S., permits two or more residential condominiums in which the initial condominium declaration was recorded prior to January 1, 1977, to operate as a single condominium for purposes of financial matters, including budgets, assessments, accounting, recordkeeping, and similar matters. Each condominium must provide for the consolidated operation in their declarations or bylaws. The condominium may also opt to consolidate their financial operations.

[29] Mortgagee consent is generally provided for in s. 718.110(11), F.S.

former unit owner or developer as part of the original construction that only benefits the unit for which it was installed and is not a part of the standard improvements installed by the developer on all the units as part of the original construction. If there is insurance for a specific improvement, the bill further provides that any party is not relieved of its obligations regarding recovery.

Section 718.111(11)(o), F.S., provides that the insurance provisions of this subsection do not apply to timeshare condominium associations. It further provides that timeshare condominium associations must maintain insurance as provided in s. 721.165, F.S.

Common Expenses
The bill amends s. 718.115(1)(a), F.S., to provide that, unless the manner of payment or allocation of expenses are addressed elsewhere in the declaration, condominium expenses or items required by the federal, state or local government, including fire safety equipment and water and sewer service, are common expenses whether or not identified as common expenses in the declaration of condominium, articles of incorporation, or the bylaws of the association.

Assessments
The bill amends the "estoppel certificate" requirement in s. 718.116(8), F.S., to include a unit owner's designee or a mortgagee designee among the persons that are entitled, upon request, to a certificate signed by an officer regarding the assessments owed by the unit owner to the association. The bill provides that the fee for the certificate must be set forth in the certificate.

The bill provides that the authority to charge a fee must be established by a written resolution adopted by the board in advance of the charge or provided by written management, bookkeeping, or maintenance contract. The bill provides that the fee must be payable upon the preparation of the certificate, and if the certificate is requested along with the sale or mortgage of the unit and the closing does not take place, the fee must be refunded upon written notice from the person requesting the certificate that the sale did not occur. The refund is the obligation of the unit owner and must be collected in the same manner as an assessment provided by s. 718.116, F.S.

Termination of Condominiums
The bill amends s. 718.117, F.S., to provide that the distribution of any sale proceeds to purchase-money lienholders on units must not exceed a unit's share of the proceeds.

Estoppel Certificates for Homeowners' Associations
The bill creates s. 720.3087, F.S., to provide for estoppel certificates for homeowners' associations. Section 718.116(8), F.S., provides for estoppel certificates for condominiums. The bill requires that the homeowners' associations must provide a certificate signed by an officer or agent of the association stating all of the assessments and other moneys that are owed to the association by the parcel owner. The association must provide the certificate within 15 days after receiving a written request from a parcel owner or a parcel mortgagee or the parcel mortgagee's designee. The bill provides that any person other than the parcel owner who relies upon the certificate shall be protected.

The bill provides that a summary proceeding pursuant to s. 51.011, F.S.,[30] may be brought to compel compliance with this requirement. The bill provides that the prevailing party in such an action is entitled to reasonable attorney's fees. It requires that association's the authority to charge a fee for the estoppel certificate must be established by written resolution adopted by the board in advance of the charge or provided by written management, bookkeeping, or maintenance contract.

The bill provides that the fee be payable upon preparation of the certificate and that, if the certificate is requested in conjunction with the sale or mortgage of the parcel and the closing does not occur, the fee must be refunded upon written notice from the person requesting the certificate that the sale did not occur. This bill also provides that the refund is an obligation of the parcel owner and must be collectable as an assessment.

Deregulation of Land Sales

The bill repeals ch. 498, F.S., to de-regulate the sale of subdivided land by the division. It also amends several sections in the Florida Statutes to correct references to ch. 498, F.S., and the division obligations and duties under that chapter.

The bill amends or repeals the following provisions that may be affected by the repeal of ch. 498, F.S.:

- Section 190.009(2), F.S. is repealed. This provision requires that the disclosures to be filed with the division pursuant to ch. 498, F.S, meet the disclosures required under s. 190.009(1), relating to public financing and maintenance of improvements to real property applicable to developers of community development districts.
- Section 380.06, F.S., relating to statewide guidelines and standards for developments of regional impact, is amended to provide that the rights of any person to complete any development are not affected by the repeal of Chapter 498, F.S.
- Section 381.0065(4)(c), F.S., relating to the installation of a central water system regulated by a pubic utility based on a density formula is amended to delete the requirement that the Department of Environmental Protection my consider the financial assurances securing the completion of promised improvements for subdivisions platted on or before October 1, 1991.
- Section s. 494.008, F.S., relating to the regulation of mortgages offered by land developers licensed pursuant to the Florida Uniform Land Sales Practices Law, is amended to remove a reference to developers registered under ch. 498, F.S.

Farm Labor Contractor Registration

The bill amends s. 450.33, F.S., to eliminate the requirement for farm labor contractors to file a set of their fingerprints with the department.

[30] Section 51.011, F.S., specifies a summary procedure for actions that specifically provide for this procedure by statute or rule. Under the summary procedure, all defenses of law or fact are required to be contained in the defendant's answer which must be filed within five days after service of process of the plaintiff's complaint. If the answer incorporates a counterclaim, plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and shall serve it within five days after service of the counterclaim. (Rule 1.140, Fla.R.Civ.Pro, requires an answer, including any counterclaims, within 20 days after service of the complaint.) No other pleadings are permitted, and all defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery, and the procedure also provides for an immediate trial, if requested.

Regulation of Professions
The bill amends several provisions of ch. 455, F.S., to, according to the department, improve the agency's ability to protect the public and process applications more efficiently.

The bill amends s. 455.203, F.S., relating to the department's powers and duties, to authorize the department, for the boards under its jurisdiction, to close and terminate license applications two years after the board or the department has notified the applicant of the deficiency. The effect of this provision is limited to deficient applications, i.e., applications that contain an error or omission. A complete application would be deemed approved if not denied within 90 days after receipt of the completed application.[31]

The bill also amends s. 455.203, F.S., to authorize the department to approve applications for professional licenses that meet all statutory and rule requirements for licensure.

The bill amends s. 455.2273, F.S., to provide that the disciplinary guidelines in this section apply to all the boards or divisions within the department. These guidelines apply notwithstanding s. 455.017, F.S., which limits the applicability of ch. 455, F.S, to the department's regulation of professions. This provision would extend the applicability of these penalty guidelines to the following business regulation divisions of the department: the Division of Alcoholic Beverages and Tobacco, the Division of Florida Condominiums, Timeshares, and Mobile Homes; the Division of Hotels and Restaurants, and the Division of Pari-mutuel Wagering.

Mold Assessors and Remediators
The bill amends s. 468.841, F.S., to exempt a licensed home inspector from licensure under the mold assessor provisions of ch. 468, F.S., if he or she is acting within the scope of the home inspection license, if they do not hold themselves out for hire to the public as a "certified mold assessor," "registered mold assessor," "licensed mold assessor," "mold assessor," or "professional mold assessor."

Construction Contracting
In the context of the regulation of construction contracting under ch. 489, F.S., the bill amends the definition of the term "contracting" in s. 489.105(6), F.S., to clarify that the term does not include an individual or business entity selling or offering to sell manufactured or factory-built buildings that will be completed on-site on property on which either party to a contract has any legal or equitable interest.

Real Estate
The bill amends s. 475.17, F.S., relating to the license qualifications for real estate broker or sales associates, to increase the experience requirement for real estate brokers from 12 months to 24 months. According to the department, this increase is consistent with the experience requirements of other states. The bill also deletes the exception to the experience requirement for the Division of Real Estate's investigators.

[31] Chapter 120, F.S., the Administrative Procedure Act, does not provide a time limit for responses to a notice for an incomplete application. Pursuant to s. 120.60, F.S., a license application is deemed complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired. It also provides that every application for a license shall be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law.

The bill amends s. 475.451(9), F.S., to delete the requirement for real estate schools to submit course rosters to the department.

Electrical and Alarm System Contractors
The bill amends ss. 489.511 and 489.515, F.S., relating to the certification requirements for electrical and alarm system contractors, to permit applicants to take the certification examination before the Electrical Contractor's Licensing Board has reviewed the applicant's experience and training qualifications. The bill authorizes the board to provide by rule the number of times per year the applicant may take the examination. It deletes the provision that an applicant may only take the examination three times. It eliminates the requirement that the applicant submit a new application after failing the examination three times.

Florida State Boxing Commission/Amateur Mixed Martial Arts
The bill amends s. 548.0065, F.S., to authorize amateur mixed martial arts events in Florida. It amends s. 548.008, F.S., to delete the prohibition against amateur mixed martial arts events.

The bill also amends s. 548.041, F.S., to expand the licensure requirements for participants in matches in Florida. The bill would require, before licensure, that participants in amateur boxing matches and amateur mixed martial arts matches must have completed the minimum number of events as determined by commission rule.

Timeshares
In the context of the regulation of timeshares under ch. 721, F.S., the bill amends s. 721.03(1)(c)5., F.S., to include nonspecific multisite timeshare plans within the exemption for the specified timeshare plans that are exempt from the requirements in s. 721.03(1)(c), F.S.

The Division of Florida Condominiums, Timeshares, and Mobile Homes
The bill amends s. 20.165, F.S., to rename the division as the Division of Florida Condominiums, Timeshares, and Mobile Homes. The bill implements the division's name change by amending several sections in the Florida Statutes that reference the division by name.

The bill amends s. 20.165(2)(j), F.S., to rename the department's Division of Technology, Licensure, and Testing as the Division of Technology. It also amends s. 455.217, F.S., to correct the reference to the Division of Technology.

The bill amends s. 718.501(1), F.S., to provide that the division has the powers and duties prescribed by ch. 718, F.S. Current law provides that the division has the powers and duties prescribed by ch. 498, F.S. The following powers and duties of the division are transferred by the bill from ch. 498, F.S., to ch. 718, F.S.:

- Section 498.009, F.S., is renumbered as s. 718.50152, F.S. This provision establishes the executive offices of the division in Tallahassee, Florida, and authorizes the division to establish and maintain branch offices.
- Section 498.011, F.S., is renumbered as s. 718.50153, F.S. This provision provides for the payment of per diem, mileage, and other expenses incurred in connection with on-site reviews or investigations. This provision is currently limited to investigations of submerged land. The bill would extend this authority to on-site reviews and investigations of condominiums under ch. 718, F.S.

- Section 498.013, F.S., is renumbered as s. 718.50154, F.S. This provision requires that the division adopt a seal by which it shall authenticate its records. It also provides that copies of the division's records, and certificates purporting to relate the facts contained in those records, when authenticated by the seal, are prima facie evidence of the records in all the courts of this state.
- The bill renumbers s. 498.057, F.S., as s. 718.50155, F.S. This provision permits the division, when acting as a petitioner or plaintiff, to provide serve of process by certified mail. The division must file an affidavit of compliance with this section within the time set by the court. This method of service of process is in addition to the methods for service of process provided for in the Florida Rules of Civil Procedure and the Florida Statutes. This provision is currently limited to court actions under ch. 498, F.S. The bill would extend this authority to court actions under ch. 718, F.S.
- The bill amends s. 718.501(1)(a), F.S., to authorize the division to submit official worksheets, investigative reports, other related documents from a financial examiner or analyst as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant under ch. 718, F.S.[32]
- The bill amends s. 718.501(1)(d)2., F.S., to authorize the division to issue an emergency cease and desist order to any developer, association, officer, or member of the board of administration, or its assignees or agents, that it finds is violating or is about to violate any provision of ch. 718, F.S., rule or of the division, or any written agreement with the division. The violation must present an immediate danger to the public requiring an immediate final order. The emergency cease and desist order is effective for 90 days. The bill provides that, if the division begins non-emergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57, F.S.[33]
- The bill creates s. 718.501(1)(d)4., F.S., to authorize the division to petition the court for the appointment of a receiver or conservator, and to delineate the duties of the receiver or conservator. It also authorizes the circuit court to impound or sequester the property of a party defendant, including books, papers, documents, and related records, and to allow the examination and use of the property by the division and a court-appointed receiver or conservator.[34]
- The bill creates s. 718.501(1)(d)5., F.S., to authorize the division to apply to the circuit court for an order of restitution, payable to the appointed conservator or receiver or directly to the persons whose funds or assets were obtained in violation of ch. 718, F.S.[35]
- The bill creates s. 718.501(1)(d)7., F.S., to authorize the division to seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under s. 718.501(1)(q), F.S. It limits the civil penalty to at least $500 but no more than $5,000 for each violation. It also provides court costs and reasonable attorney's fees to the prevailing party. If the division prevails, the court may also award the division the reasonable costs of its investigation.[36]

[32] The division currently has this authority under s. 498.047(7), F.S.
[33] The division has this authority under s. 498.051, F.S.
[34] The division currently has this authority under s. 498.007(2), F.S.
[35] The division currently has this authority under s. 498.007(3)(a), F.S.
[36] The division currently has this authority under s. 498.007(3)(b), F.S.

- The bill creates s. 718.501(1)(n), F.S., to authorize the division to contract with agencies in this state or in other jurisdictions to perform investigative functions. It also authorizes the division to accept grants-in-aid from any source.[37]
- The bill creates s. 718.501(1)(o), F.S., to require the division to cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.[38]
- The bill creates s. 718.501(1)(p), F.S., to deem the division's notice to a developer to be complete when it is delivered to the developer's address currently on file with the division.[39]
- The bill creates s. 718.501(1)(q), F.S., to authorize the division to issue a notice to show cause and that provides a hearing, upon written request, in accordance with ch. 120, F.S.[40]

The bill amends s. 718.509, F.S, to rename the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund as the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. All moneys collected by the division from fees, fines, or penalties or from costs awarded to the division by a court or administrative order are required to be paid into the renamed trust fund. The current provision for the trust fund is deleted by the repeal of ch. 498, F.S.[41] The bill requires that the division maintain separate revenue accounts in the trust fund for each business regulated by the division, that the division allocate its expenses by each program area, and that it prepare an annual report of revenues and expenses. According to the department, the division currently maintains individual accounts and prepares annual reports in this manner.

Effective Date
The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[37] The division currently has this authority under ss. 498.007(5)(b) and (c), F.S.
[38] The division currently has this authority under s. 498.007(6), F.S.
[39] The division currently has this authority under s. 498.007(8), F.S.
[40] The division currently has this authority under s. 498.053, F.S.
[41] The division's trust fund is created by s. 498.019, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The clarification and revision of the insurance provisions in the bill will aide condominium associations, unit owners and insurers. Unit owners will benefit by obtaining complete and accurate disclosures of condominium insurance policies prior to the execution of the agreement by the condominium association. Surplus lines insurers selling coverage to three or more condominiums with limits equal to the 250-year PML (rather than total replacement value) would be subject to the costs of obtaining approval from the OIR for rates and policy forms.

C. Government Sector Impact:

The OIR will have the responsibility to review and approve rates and policy forms, determine that the loss model is accurately and appropriately applied and that complete disclosure is provided to unit owners of condominium associations that pool their resources to obtain and maintain hazard insurance coverage.

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 Regulated Industries on March 25, 2008
The committee substitute (CS) creates s. 718.111(11)(o), F.S., to clarify that the insurance provisions of this subsection do not apply to timeshare condominium associations.
The CS repeals ch. 498, F.S., to de-regulate the sale of subdivided land by the division. It also amends several sections in the Florida Statutes to correct references to ch. 498, F.S., and the division obligations and duties under that chapter.
The CS amends the following provisions that may be affected by the repeal of ch. 498, F.S., including ss. 380.06, 381.0065(4)(c), and 494.008, F.S. It also repeals s. 190.009(2), F.S.

The CS amends s. 450.33, F.S., to eliminate the requirement for farm labor contractors to file a set of their fingerprints with the department.

The CS amends provisions of ch. 455, F.S., relating to the department's licensing functions for the boards under its jurisdiction, including, s. 455.203, F.S., to authorize the department to close and terminate license applications two years after the board or the department has notified the applicant of the deficiency, and s. 455.203, F.S., to authorize the department to approve applications for professional licenses that meet all statutory and rule requirements for licensure.

The CS amends s. 475.17, F.S., relating to the experience requirement for real estate broker or sales associates. The CS amends s. 475.451(9), F.S., to delete the requirement for real estate schools to submit course rosters to the department. The CS amends ss. 489.511 and 489.515, F.S., relating to the certification requirements for electrical and alarm system contractors. The CS amends ss. 548.0065 and 548.008, F.S., to authorize amateur mixed martial arts events in Florida, and s. 548.041, F.S., to provide a experience requirement for participants in amateur boxing matches and amateur mixed martial arts matches.

The CS amends s. 20.165, F.S., to rename the division as the Division of Florida Condominiums, Timeshares, and Mobile Homes. The CS implements the division's name change by amending several sections in the Florida Statutes that reference the division by name. It also amends s. 20.165(2)(j), F.S., to rename the department's Division of Technology, Licensure, and Testing as the Division of Technology, and s. 455.0217, F.S., to correct a reference to the renamed division.

The CS amends s. 455.2273, F.S., to provide that the disciplinary guidelines in this section apply to all the boards or the divisions within the department.

The CS amends s. 468.841, F.S., to clarify the exemption for licensed inspectors to the mold assessor license requirements.

The CS amends the definition of the term "contracting" in s. 489.105(6), F.S.

The CS amends s. 721.03(1)(c)5., F.S., to reference nonspecific multi-site timeshare plans within the exemption.
The CS amends s. 718.501(1), F.S., to provide that the division has the powers and duties prescribed by ch. 718, F.S. The CS also renumbers the following provisions in ch. 498, F.S., to transfer powers and duties currently in that Chapter to ch. 718, F.S.:

- Section 498.009, F.S., is renumbered as s. 718.50152, F.S.
- Section 498.011, F.S., is renumbered as s. 718.50153, F.S.
- Section 498.013, F.S., is renumbered as s. 718.50154, F.S.
- Section 498.057, F.S., is renumbered as s. 718.50155, F.S.

The CS amends s. 718.509, F.S, to rename the division's current trust fund as the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund, and to provide for its maintenance.

B. Amendments:

Barcode 934934 by Banking and Insurance – The amendment clarifies that an estoppel certificate fee be refunded to the payer within 30 days after receipt of the payer's request in conjunction with the sale of a condominium unit where the closing does not occur. Also clarifies that the request for the refund be made within 30 days.

Barcode 837736 by Banking and Insurance – The amendment removes the authority for the Office of Insurance Regulation (OIR) to review and approve rates pursuant to s. 627.062, F.S., under a hazard insurance policy for a group of three or more condominium associations (This provision is relevant only to surplus lines insurers which are currently not required to have their rates or forms approved by the OIR, but the OIR would still be required to approve the rates of authorized insurers). The amendment requires OIR to approve or disapprove the "insurance program" within 90 days, except for approval of policy and related forms which are subject to the procedures under s. 627.410, F.S.

The "insurance program" which is subject to OIR approval or disapproval consists of the following:

- a determination by the OIR that the loss model approved by the Commission was accurately and appropriately applied to the insured structures to determine the 250-year probable maximum loss;
- a determination by the OIR that complete and accurate disclosure of all material provisions is provided to condominium unit owners prior to the execution of the agreement by the condominium association; and
- approval of policy and related forms.