

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1373 Condominiums
SPONSOR(S): Civil Justice Subcommittee; Sands
TIED BILLS: None **IDEN./SIM. BILLS:** SB 712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N, As CS	Woodburn	Bond
2) Business & Consumer Affairs Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

A condominium is a form of ownership of real property created pursuant to statute, which is comprised entirely of units that may be owned by one or more persons, and in which there is, belonging to each unit, an undivided share in the common elements. The owners of the units may form a condominium association by declaration that is charged with the management and oversight of the common elements of the condominium building. The association may also make and collect assessments in connection with its duties. If an owner fails to pay these assessments within ninety days the association may suspend the owner's use of common elements, common facilities, and other association property.

The bill provides that the common facilities of the association that may be suspended from use of the owner include, but are not limited to: recreation facilities, pools, gyms, meeting rooms, and valet service.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Condominiums

A condominium is a "form of ownership of real property created pursuant to ch. 718, F.S., 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 not less than the owners of two-thirds of the units.⁵ Condominiums are administered by a board of directors referred to as a "board of administration."⁶

The condominium association, which is administered by a board of administration, has many powers and duties pursuant to s. 718.11, F.S., including managing the common areas, contracting on behalf of the condominium pursuant to its powers and duties and making and collecting assessments.

Obligations of the Owner and Remedies for Non-Payment to the Association

Section 718.303(1), F.S., provides that:

Each unit owner, each tenant and other invitee, and each association is governed by, and must comply with the provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws which shall be deemed expressly incorporated into any lease of a unit.

One of the obligations of the owner is the payment of assessments. Section 718.303(3), F.S., provides that:

If a unit owner is delinquent for more than 90 days in paying a monetary obligation due to the association, the association may suspend the right of a unit owner or a unit's occupant, licensee, or invitee to use common elements,⁷ common facilities,⁸ or any other association property⁹ until the monetary obligation is paid.

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.

⁷ As defined in s. 718.103(8), F.S., "'Common elements' means the portions of the condominium property not included in the units."

⁸ "Common facilities," is not defined in s. 718.103, F.S.

⁹ As defined in s. 718.103(3), F.S., "'Association property' means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members."

Some condominium associations are interpreting the phrase "common elements" that may be suspended to include phone service.

Effect of the Bill

The bill amends s. 718.303(3), F.S., to provide that common elements subject to suspension of use if the unit owner is delinquent for more than 90 days in paying a monetary obligation to the association include, but are not limited to: recreation facilities, pools, gyms, meeting rooms, and valet service.

B. SECTION DIRECTORY:

Section 1 amends s. 718.303, F.S., regarding common elements of a condominium.

Section 2 provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2011, the Civil Justice Subcommittee adopted one amendment. The amendment deleted the reference to cable television service and Internet service as common elements. The amendment also deleted the reference to water and utility service as the only utilities not subject to suspension by an association. The bill was then reported favorably.