

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 Regulated Industries Committee

BILL: SB 530

INTRODUCER: Senator Fasano

SUBJECT: Condominium, Cooperative, and Homeowners Associations

DATE: March 11, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Pre-meeting
2.	_____	_____	CA	_____
3.	_____	_____	JU	_____
4.	_____	_____	BC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill revises laws related to condominium, homeowners', and cooperative associations. Regarding condominium associations, the bill:

- Includes unit owner facsimile numbers as a record to be maintained by the association;
- Permits condominium unit owners to consent to the disclosure of protected information, e.g. name and telephone numbers for a membership directory;
- Permits unit owners to have access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee;
- Permit condominium association to hold closed meetings to discuss personnel matters;
- Provides that the newly elected or appointed board members may, in lieu of the written certification, submit a certificate of having satisfactorily completed an educational curriculum within 1 year before the election;
- Requires a vote of, or written consent by, a majority of the total voting interests of an association in order to enter into agreements and to acquire leaseholds, memberships and other possessory or use interests in lands or facilities;
- Permit associations to charge for any reasonable expenses for collection services incurred relating to a unit owner's delinquent account;
- Provide that a claim of lien may secure reasonable expenses for collection services relating to the delinquent account;
- Permits condominium associations to charge for any reasonable expenses for collection services;
- Permits the association to demand payment from a unit owner's tenant for all unpaid monetary obligations of a unit owner owned to the association;

- Provides procedures and requirements for partial termination of a condominium property;
- Provides for the suspension of use rights and election rights of unit owners who are more than 90 days delinquent in the payment of a monetary obligation; and
- Revises provisions related to bulk assignees and bulk buyers.

Regarding cooperative associations, the bill:

- Permits the association to demand payment from a unit owner's tenant for all unpaid monetary obligations of a unit owner owned to the association;
- Provides for the suspension of use rights and election rights of unit owners who are more than 90 days delinquent in the payment of a monetary obligation;
- Permits unit owners to have access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee.

Regarding homeowners' association, the bill:

- Provides for the suspension of use rights and election rights of unit owners who are more than 90 days delinquent in the payment of a monetary obligation;
- Provide that a claim of lien may secure reasonable expenses for collection services relating to the delinquent account;
- Permits the association to demand payment from a unit owner's tenant for all unpaid monetary obligations of a unit owner owned to the association;
- Authorizes and provides procedures for homeowners associations to contract for communications, information, or Internet services on a bulk rate basis.

The bill provides an effective date of July 1, 2011.

This bill substantially amends the following sections of the Florida Statutes: 718.111, 718.112, 718.114, 718.116, 718.117, 718.303, 718.703, 718.704, 718.705, 718.706, 718.707, 719.108, 719.303, 720.303, 720.305, 720.3085, and 720.309.

II. Present Situation:

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:

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

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

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) of the Department of Business and Professional Regulation (department), in accordance with ch. 718, F.S.

The division is afforded the complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., with respect to associations that are still under developer control.⁷ It also has the authority to investigate complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301, F.S. After control of the condominium is transferred from the developer to the unit owners, the division’s jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S.

As part of the division’s authority to investigate complaints, s. 718.501(1), F.S., provides the division with the authority to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

Condominium – Official Records

The official records of the condominium are governed by s. 718.112, F.S. What constitutes the official records is provided in s. 718.112(12)(a), F.S. The official records of a condominium association must be maintained within the state for at least seven years.⁸ The records must be made available to the unit owner within 45 miles of the condominium property or within the county in which the condominium property is located. The records must be made available within five working days after a written request is received by the governing board of the association or its designee. The records may be made available by having a copy of the official records of the association available for inspection or copying on the condominium property or association property. Alternatively, the association may offer the option of making the records of

³ *Neuman v. Grandview 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 Section 718.501(1), F.S.

⁸ Section 718.111(12)(b), F.S.

the association available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

The association must maintain accounting records and separate accounting records for each condominium that the association operates.⁹ Section 718.111(12)(c), F.S., provides that all accounting records must be maintained for a period of not less than seven years. It prohibits any person from knowingly or intentionally defacing or destroying accounting records required to be maintained by ch. 718, F.S. It also prohibits a person from knowingly or intentionally defacing or destroying accounting or official records required to be created or maintained for a required period as provided in ch. 718, F.S., or knowingly or intentionally failing to create or maintain accounting records as required with the intent of causing harm to the association or one or more of its members. Persons who violate this provision are subject to a civil penalty as provided in s. 718.501(1)(d)6., F.S. The prohibition s. 718.111(12)(c), F.S., is substantially similar to the prohibition in s. 718.111(12)(a)11., F.S.

Section 718.111(12)(c), F.S., prohibits unit owner access to certain official records or information in the possession of the association, including:

- Records protected by attorney-client privilege;
- Information in connection with the approval of the lease, sale, or other transfer of a unit;
- Personnel records, including but not limited to disciplinary, health, insurance, and personnel records of the association's employees;
- Social security numbers, driver's license numbers, credit card numbers, email addresses, telephone numbers, emergency contact information, and any addresses of a unit owner that are not provided to fulfill the association's notice requirements, and any person identifying information of a unit owner;
- Electronic security measures used to safeguard data, including passwords; and
- Software and operating systems used by the association to allow manipulation of data.

Section 718.111(12)(c), F.S., permits access to the following personal identifying information of a unit: the person's name, lot or unit designation, mailing address, and property address.

Post-Election Certification of Condominium Board Members

The requirements for the association's bylaws are provided in s. 718.112, F.S. Section 718.112(2)(d)3.b., F.S., provides a post-election certification requirement for newly elected board members. Within 90 days of being elected or appointed, a new board member must certify that he or she:

- Has read the declaration of condominium for all condominiums operated by the association and the association's articles of incorporation, bylaws, and current written policies;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

⁹ Section 718.111(12)(a)11., F.S.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider.

A board member is automatically suspended from service on the board if he or she fails to timely file the written certification or educational certificate. The board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a director's election or appointment. The validity of any appropriate action is not affected by the association's failure to have the certification on file.

Condominium – Assessments and Foreclosures

Current law 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.”¹⁰

“Special assessment” is defined to mean “any assessment levied against a unit owner other than the assessment required by a budget adopted annually.”¹¹

A unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.¹²

If a first mortgagee, (e.g., the mortgage lending bank) or its successor or assignee, acquires title to a condominium unit by foreclosure or by deed in lieu of foreclosure, the first mortgagee's liability for unpaid assessments is limited to the amount of assessments that came due during the 12 months immediately preceding the acquisition of title or 1 percent of the original mortgage debt, whichever is less.¹³ However, this limitation applies only if the first mortgagee joined the association as a defendant in the foreclosure action. This gives the association the right to defend its claims for unpaid assessments in the foreclosure proceeding. A first mortgagee who acquires title to a foreclosed condominium unit is exempt from liability for all unpaid assessments if the first mortgage was recorded prior to April 1, 1992.¹⁴ The successor or assignee, in respect to the first mortgagee, includes only a subsequent holder of the first mortgage.¹⁵

Section 718.116(3), F.S., provides for the accrual of interest on unpaid assessments. Unpaid assessments and installments on assessments accrue interest at the rate provided in the declaration from the due date until paid. The rate may not exceed the rate allowed by law.¹⁶ If no rate is specified in the declaration, the interest accrues at the rate of 18 percent per year. The

¹⁰ Section 718.103(1), F.S.

¹¹ Section 718.103(24), F.S.

¹² Section 718.116(1)(a), F.S.

¹³ Section 718.116(1)(b), F.S.

¹⁴ Section 718.116(1)(e), F.S.

¹⁵ Section 718.116(1)(g), F.S.

¹⁶ Section 687.02(2), F.S., prohibits as usurious interest rates that are higher than the equivalent of 18 percent per annum simple interest.

association may also charge an administrative late fee of up to the greater of \$25 or 5 percent of each installment of the assessment for each delinquent installment for which the payment is late. Payments are applied first to the interest accrued, then the administrative late fee, then to any costs and attorney's fees incurred in collection, and then to the delinquent assessment.

Condominiums – Assessment Payments by Tenants (Section 12)

Section 718.116(11), F.S., authorizes the association to demand payment of any future monetary obligation from the tenant of a unit owner if the unit owner is delinquent in payment. The association must mail written notice of such action to the unit owner. The tenant is obligated to make such payments. These provisions are comparable to the provisions in ss. 719.108(10) and 720.3085(8), F.S., for tenants in cooperative associations and homeowners' associations, respectively.

The tenant is not required to pay any unpaid past monetary obligations of the unit owner. The tenant is required to pay monetary obligations to the association until the tenant is released by the association or by the terms of the lease, and is liable for increases in the monetary obligations only if given a notice of the increase not less than 10 days before the date the rent is due.

If the tenant has prepaid rent to the unit owner before the receipt of the association's demand for payment, and the tenant provides written evidence of the prepaid rent to the association within 14 days of receipt of the written demand, then the tenant must make all accruing rent payments thereafter to the association. The tenant will receive credit for the prepaid rent for the applicable period, and those payments will be credited against the monetary obligations of the unit owner to the association. A tenant who responds in good faith to a written demand from an association shall be immune from any claim from the unit owner. It is unclear to what extent "claims" are precluded by the immunity afforded in this provision. For example, if the tenant pays the obligation and subtracts that amount from the rent owed to the unit owner, the unit owner may be precluded from recovering in a "breach of lease" claim.

The landlord and unit owner must provide the tenant a credit against rent payments to the unit owner in the amount of monetary obligations paid to the association. The tenant's liability to the association may not exceed the amount due from the tenant to his or her landlord. If a tenant fails to pay, the association may act as a landlord to evict the tenant under the procedures in ch. 83, F.S. However, the association is not otherwise considered a landlord under ch. 83, F.S., and does not have the duty to maintain the premises as required by s. 83.56, F.S. The tenant's payments do not give the tenant voting rights or the right to examine the books and records of the association. If a court appoints a receiver, the effects of s. 718.116(11), F.S., may be superseded.

A comparable is provided in s. 719.108(10), F.S., relating to tenants in cooperative associations, and s. 720.3085(8), F.S.

Termination of a Condominium

Section 718.117, F.S., provides for the termination of condominiums when the continued operation of the condominium would constitute economic waste or would be impossible to operate or reconstruct a condominium. To terminate the condominium, the required vote is the

lesser of the lowest percentage of voting interests needed to amend the declaration or as otherwise provided in the declaration for termination of the condominium.¹⁷ The criteria for economic waste or impossibility are:

- The total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all units in the condominium after completion of the repairs; or
- It becomes impossible to operate or reconstruct a condominium in its prior physical configuration because of land-use laws or regulations.

If 75 percent or more of the condominium units are timeshare units, the condominium may be terminated by a plan of termination that is approved by 80 percent of the total voting interests of the association and the holders of 80 percent of the original principal amount of outstanding recorded mortgage liens of timeshare estates in the condominium, unless the declaration provides for a lower voting percentage.¹⁸

Section 718.117(3), F.S., provides an optional termination procedure with a lower vote threshold. Regardless of whether continued operation would constitute economic waste or would be impossible, the condominium may be terminated if approved by at least 80 percent of the total voting interests of the condominium, provided that not more than 10 percent of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections thereto.

Section 718.117(4), F.S., provides that a plan of termination is not an amendment subject to s. 718.110(4), F.S., which relates to amendments that may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium.

Section 718.117(9), F.S., provides the plan for termination must be a written document executed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee. The plan may provide that each unit owner retains the exclusive right of possession to the portion of the real estate that formerly constituted the unit, in which case the plan must specify the conditions of possession.¹⁹ In the case of a conditional termination, the plan must specify the conditions for termination. A conditional plan will not vest title in the termination trustee until the plan and a certificate executed by the association with the formalities of a deed have been recorded that confirm the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the voting interests.²⁰

Section 718.117(12), F.S., provides for the distribution of the proceeds of sale. Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium

¹⁷ Section 718.117(2)(a), F.S.

¹⁸ Section 718.117(2)(b), F.S.

¹⁹ Section 718.117(11)(a), F.S.

²⁰ Section 718.117(11)(b), F.S.

property, the plan must first apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair-market values immediately before the termination. The market values are to be determined by one or more independent appraisers selected by the association or termination trustee. The value of the common elements is to be paid to the owners according to their proportionate share in the common elements, as in current law.

Section 718.117(14), F.S., provides that the unit owners' rights and title as tenants in common in undivided interests in the condominium property vest in the termination trustee when the plan is recorded on in a later date specified in the plan. The termination trustee may deal with the condominium property or any interest therein if the plan confers on the trustee the authority to protect, conserve, manage, sell, or dispose of the condominium property. The trustee may contract for the sale of real property, but the contract is not binding on the unit owners until the plan is approved.

Section 718.117(17), F.S., provides that the condominium property, association property, common surplus, and other assets of the association must be held by the termination trustee. The trustee would hold the property as trustee for the unit owner and lienholders in their order or priority.

Section 718.117(19), provides that the trustee is not barred from filing of a declaration of condominium, or an amended and restated declaration of condominium, for any portion or the property.

Condominium – Sanctioning Unit Owners

Section 718.303(3), F.S., provides for the assessment of fines and provides penalties for failure to pay a monetary obligation to the association.. It authorizes condominium associations to suspend a unit owner's use rights if the unit owner is delinquent for more than 90 days in the payment of a monetary obligation to the association. The suspension may be, for a reasonable period of time, for the right of a unit owner or a unit's occupant, licensee, or invitee, to use common elements, common facilities, or any other association property. The association cannot suspend the right to use limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators. The declaration of condominium or the bylaws of the association must authorize the suspension. A fine may not exceed \$100 per violation, but may be levied on each day of a violation. A fine does not become a lien on the property. A fine against a unit owner may not in the aggregate exceed \$1,000. Before a suspension or fine is imposed, notice and an opportunity for a hearing must be provided.

Suspensions may not be imposed by an association unless it first gives at least 14-days notice and an opportunity for a hearing to the unit owner or occupant, if applicable. Associations may provide in their bylaws or declaration of condominium that a unit owner's voting rights may be suspended due to nonpayment of assessments, fines, or other charges payable to the association which are delinquent in excess of 90 days. The suspension shall end when the payment due or overdue to the association is paid in full.

Distressed Condominium Relief Act

The “Distressed Condominium Relief Act” in part VII of ch. 718, F.S., defines the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties.

Section 718.703(1), F.S., defines the term “bulk assignee” to mean a person who acquires more than seven condominium parcels as provided in s. 718.707, F.S., and receives an assignment of some or substantially all of the rights of the developer as an exhibit in the deed or as a separate instrument recorded in the public records in the county where the condominium is located.

Section 718.703(2), F.S., defines the term “bulk buyer” as a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of developer rights other than the right to:

- Conduct sales, leasing, and marketing activities within the condominium;
- Be exempt from making working capital contributions that arise out of or in connection with the bulk buyer’s acquisition of a bulk number of units; and
- Be exempt from any rights of first refusal which may be held by the association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to any third-party purchaser concerning one or more units.

Section 718.704, F.S., provides for the assignment and assumption of developer rights, to provide that a bulk assignee assumes all the duties and responsibilities of the developer. The bulk assignee is not liable for:

- The warranties of a developer under s. 718.203(1) or 718.618, F.S.; however, the bulk assignee would assume the warranties for design, construction, development, or repair work performed by or on behalf of the bulk assignee;
- The obligation to fund converter reserves for a unit not acquired by the bulk assignee;
- The obligation to provide converter warranties on any portion of the condominium property except as provided in a contract for sale between the assignee and a new purchaser;
- Provide the condominium association with a cumulative audit of the association’s finances from the date of formation, except for the period that the bulk assignee elects a majority of the board; and
- The developer’s failure to fund previous assessments or resolve budget deficits, but the bulk assignee must provide an audit for the period in which the assignee elects a majority of the board members, except when the bulk assignee receives the assignment of rights of the developer to guarantee assessment levels and fund budget deficits.

Section 718.705, F.S., provides for the transfer of control of the condominium board of administration to the unit owners other than the developer, if a bulk owner is entitled to elect a majority of the board members. The condominium parcel acquired by the bulk assignee is not

deemed to be conveyed to a buyer, or to be owned by anyone other than the developer, until the parcel is conveyed to a buyer who is not the bulk assignee.

Section 718.706, F.S., provides for the sale or lease of units by a bulk assignee or a bulk buyer. It provides that, prior to the sale or lease of units for a term of more than five years, a bulk assignee or a bulk buyer must file the specified documents with the division and provide the documents to a prospective purchaser or tenant.

Section 718.707, F.S., provides a time limit for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the parcels were acquired prior to July 1, 2012. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

Cooperative Associations

Section 719.103(12), F.S., defines a “cooperative” as:

that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, an cooperative unit’s occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.²¹

Cooperatives - Sanctioning Unit Owners

Section 719.303(3), F.S., permits cooperative associations to levy reasonable fines against unit owners for failure to comply with the cooperative documents or rules of the association. Fines may not exceed \$100 per violation and may not become a lien against the unit. The fine may be levied on the basis of each day of a continuing violation. A fine may not exceed \$1,000 in the aggregate.

Homeowners’ Associations – Background

Florida law provides statutory recognition to corporations that operate residential communities in this state, provides procedures for operating homeowners’ associations, and protects the rights of association members without unduly impairing the ability of such associations to perform their functions.²²

A “homeowners’ association” is defined as 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

²¹ See ss. 719.106(1)(g) and 719.107, F.S.

²² See s. 720.302(1), F.S.

owners or their agents, or a combination thereof, 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.²³ Unless specifically stated to the contrary, homeowners' associations are also governed by ch. 617, F.S., relating to not-for-profit corporations.²⁴

Homeowners' associations are administered by a board of directors whose members are elected.²⁵ The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.²⁶ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.²⁷

Homeowners' Associations – Inspection and Copying of Records (Section 22)

Section 720.303(5), F.S., provides for the inspection and copying of homeowners' association records. Generally, the official records of the association must be open to the association's membership for inspection and available for photocopying within 10 days of a written request for access. Section 720.303(5)(a), F.S., creates a rebuttable presumption that the association has willfully failed to comply with a member's written request to inspect its records if the association does not provide the member access to the records within ten days of the request. The member's request must be submitted by certified mail, return receipt requested.

Section 720.303(5)(c), F.S., authorizes the association to charge the member for the actual cost of copying records, to provide that the actual cost of copying records includes reasonable costs involving personnel fees and charges at an hourly rate for employee time to cover the administrative costs to the association. The copies may be made by the management company.

Section 720.303(5)(c)1., F.S., lists the official documents of the homeowners' association that are not accessible to members. These include:

- Records protected by attorney-client privilege;
- Information in connection with the approval of the lease, sale, or other transfer of a unit;
- Personnel records, payroll records of the association's employees. but not limited to disciplinary, payroll, health, and insurance records;
- Medical records of parcel owners or community residents;
- Social security numbers, driver's license numbers, credit card numbers, electronic mailing addresses, telephone numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, and property address;

²³ Section 720.301(9), F.S.

²⁴ Section 720.302(5), F.S.

²⁵ See ss. 720.303 and 720.307, F.S.

²⁶ See ss. 720.301 and 720.303, F.S.

²⁷ Section 720.303(1), F.S.

- Any electronic security measure that is used by the association to safeguard data, including passwords; and
- The software and operating system used by the association which allows the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

Regarding records that are protected by the attorney-client privilege and that was prepared exclusively for civil or criminal litigation, s. 720.303(5)(c)1., F.S., provides that the protection lasts until the conclusion of the litigation or administrative proceedings.

This information is consistent with s. 718.111(12)(c), F.S., which exempts the same information from the open records requirements condominium associations.

Homeowners' Associations – Sanctioning Parcel Owners

Section 720.305(2), F.S., authorizes homeowners' associations to suspend a unit owner's use rights until the unit owner's monetary obligation to the association is paid if the unit owner is delinquent for more than 90 days. The suspension of the parcel owner's right to use association property does not apply to common areas that provide access or utility services to the parcel. Any fine or suspension must be imposed at a properly noticed board meeting. The owner, and, if applicable, the owner's occupant, licensee, or invitee must be notified of the fine or suspension by mail or hand delivery.

The association may levy a fine of up to \$100 per violation. The fine may be levied for each day of the violation and may not exceed \$1,000 in the aggregate. A fine of less than \$1,000 may not become a lien against a parcel. If the association imposes a fine or suspension, the association must provide written notice by mail or hand delivery to the parcel owner or, in some instances, any tenant, licensee, or invitee of the parcel owner.

III. Effect of Proposed Changes:

Condominiums – Official Records (Section 1)

The bill amends s. 718.111(12)(a)7., F.S., by adding unit owner facsimile numbers as a record to be maintained by the association. It replaces the term "electronic mail addresses" with the term "email address." The bill clarifies that the email and facsimile addresses of unit owners may not be accessible to unit owners if the unit owner has consented to receive notice via electronic transmission in accordance with subparagraph (12)(c)5 of s. 718.111, F.S. This provision is unclear. The cross reference in does not relate to consent to receive notice via electronic transmission.

The bill amends s. 718.111(12)(a)11., F.S., to clarify that the prohibited defacement or destruction of records relates to the accounting records that are required to be maintained for 7 years. It deletes redundant language relating to the records that are required to be created or maintained by ch. 718, F.S., during the period such records are required to be maintained.

The bill deletes the prohibition in s. 718.111(12)(c), F.S., relating to the defacement or destruction of accounting or official records, including the provision for a civil penalty as provided in s. 718.501(1)(d)6., F.S. The deleted provision is substantially similar to an existing prohibition in s. 718.111(12)(a)11., F.S., which is not deleted by this bill.

The bill amends s. 718.111(12)(c)1., F.S., which relate to access to records protected by the lawyer-client privilege, to apply the access restriction to records prepared in anticipation of litigation or proceedings. It deletes the current reference to the litigation being imminent civil or criminal litigation or an imminent adversarial proceeding.

The bill amends s. 718.111(12)(c)3., which relates to personnel records that are not accessible to unit owners, to permit unit owners to have access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee.

The bill amends s. 718.111(12)(c)5., which relates to information about unit owners that is not accessible to other unit owners, to include facsimile numbers in the list of information that is not accessible to unit owners. It also provides that any address, e-mail address, or facsimile number provided to the association to fulfill its notice requirements is not accessible.

Section 718.111(12)(c)5., F.S., is amended to prohibit access to information about unit owners that is provided to fulfill the association's notice requirements, including any address, e-mail address, or facsimile number. The bill also amends s. 718.111(12)(c)5., F.S., to permit unit owners to consent to the disclosure of protected information. It provides that the association is not liable for the disclosure of protected information if it is included in other official records of the association which are not protected. This provision is consistent with the provision in s. 718.111(12)(a)7., F.S., that provides that the association is not liable for the erroneous disclosure of e-mail addresses and facsimile numbers.

Condominiums – Bylaws (Section 2)

The bill creates s. 718.112(2)(c)3.b., F.S., to permit condominium association to hold closed meetings to discuss personnel matters.

The bill amends s. 718.112(2)(d)4.a., F.S., to revise the post-election certification requirements for newly elected or appointed board member. The bill provides that the newly elected or appointed board member may, in lieu of the written certification, submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium provider within 1 year before the election. It also provides that a certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

Condominiums – Association Powers (Section 3)

The bill amends s. 718.114, F.S., to require a vote of, or written consent by, a majority of the total voting interests of an association in order to enter into agreements and to acquire leaseholds, memberships and other possessory or use interests in lands or facilities rather than allowing the declaration to authorize the approval.

Condominiums – Assessments (Section 4)

The bill amends s. 718.116(3), F.S., to permit condominium associations to charge for any reasonable expenses for collection services incurred relating to a unit owner's delinquent account. It clarifies that any payment received on a delinquent account must be applied in the following order: first to any interest, then to any administrative late fee, then to any expenses for collection services, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment.

The bill amends s. 718.111.116(5), F.S., to provide that a claim of lien secures any reasonable expenses for collection services relating to the delinquent account which the association incurred before it filed the claim.

The bill amends s. 718.116(11), F.S., to provide that a tenant may be required by the association to pay all unpaid rent due to the association. The tenant must continue to make payments to the association until all of the unit owner's monetary obligations to the association have been paid in full. Current law only authorizes the association to demand payment from the tenant for any future monetary obligations of the unit owner. The bill requires that the tenant's payment must be applied to the unit owner's most delinquent monetary obligation.

Comparable provisions for the collecting a unit owner's unpaid monetary obligations from their tenant are provided in the bill for cooperative in s. 719.108(10), F.S., and for homeowners' association in s. 720.3085(8), F.S.

Condominium - Termination of Condominium (Section 5)

The bill amends s. 718.117(3), F.S., to provide that a condominium may be terminated for all or a portion of the condominium property. Current law does not reference the termination of a portion of the condominium property.

The bill amends s. 718.117(4), F.S., to provide that a plan for partial termination is not an amendment subject to s. 718.110(4), which requires that all unit owners must approve any amendment that changes the configuration or size of any unit in any material fashion, materially alters or modifies the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses. The bill would permit the partial termination of a condominium with a less than unanimous approval of the owners.

The bill also amends s. 718.117(4), F.S., to provide that a partial termination is permissible if the percentage of ownership share in the common elements remains proportional to the percentage of common element ownership before the partial termination.

The bill amends s. 718.117(11), F.S., to provide that the plan for partial termination must:

- Identify the units that survive the partial termination; and
- Provide that the units that survive the termination remain in the condominium form of ownership.

The bill clarifies that, in a partial termination, title to the surviving units and common elements remain vested in the ownership shown in the public records and do not vest in the termination trustee.

The bill amends s. 718.117(12)(a), F.S., which relates to the allocation of proceeds from the sale of condominium property after a termination, to provide that, in a partial termination, the aggregate values of the units and common elements that are being terminated must be separately determined. It also requires that the plan of termination must specify the allocation of the proceeds of sale for the units and common elements.

The bill amends s. 718.117(12)(d), F.S., to provide that liens on terminated units transfer to the sale of the portion being terminated attributable to each unit.

Regarding the association, the bill amends s. 718.117(18), F.S., to provide that the association may continue as the condominium association for the property that remains after the partial termination.

The bill amends s. 718.117(19), F.S., to provide that a partial termination does not bar the termination trustee from filing a declaration of condominium for any portion of the property that it terminated under the plan for partial termination. The termination plan may also provide for the simultaneous filing of an amendment to the declaration of condominium or an amended and restated declaration of condominium for any remaining portion of the condominium property.

Condominiums – Obligations of Owners and Occupants (Section 6)

The bill amends subsection (3) of s. 718.303, F.S., by deleting the provision authorizing the suspension of rights when a unit owner is more than 90 days delinquent in the payment of a monetary obligation. The bill adds the deleted provision from subsection (3) of s. 718.303, F.S., to a new subsection (4).

The bill also amends subsections (3) and (4) of s. 718.303, F.S., to provide that a 14-day notice and a hearing are not required when the association suspends use rights when an owner is more than 90 days delinquent in the payment of any monetary obligation. A hearing is still required before a fine may be imposed and a board meeting is required before suspension of use rights.

The bill amends subsection (5) of s. 718.303, F.S., which relates to suspending the voting rights of a member due to nonpayment of a monetary obligation, to provide that the notice and hearing requirement for fines in subsection (3) do not apply to suspensions under this subsection.²⁸

The bill creates subsection (6) of s. 718.303, F.S., to provide that all suspensions of use rights under subsection (4) and voting rights under subsection (5) must be approved at a properly noticed board meeting. Once approved, the unit owner and, if applicable, the unit's occupant, licensee, or invitee, must be given notice by mail or hand delivery.

²⁸ Section 718.303(3), F.S., requires reasonable notice and opportunity for a hearing before a committee of unit owners before a cooperative association may levy a fine. The fine cannot be levied if the committee does not agree with the fine.

The bill deletes the notice and hearing provisions in the current subsection (4) of s. 718.303, F.S., which relate to fines and suspension of use rights. The deleted provisions are redundant of the notice and hearing provisions in subsections (3), (4), (5), and (6) of s. 718.303, F.S.

The suspension provisions in s. 718.303, F.S., are substantially similar to the suspension provisions in the bill for cooperatives in s. 719.303, F.S., and for homeowners' associations in s. 720.305, F.S.

Distressed Condominium Relief Act - Definitions (Section 7)

The bill amends s. 718.703, F.S., to redefine the terms "bulk assignee" and "bulk buyer." The bill further distinguishes the differences between the two classifications.

The bill amends the definition of "bulk assignee" in s. 718.703(1), F.S., to provide that a bulk assignee acquires seven condominium units in a single condominium. Current law does not specify whether the seven condominium units are in a single condominium. It further revises the definition for a bulk buyer to include a final judgment or certificate of title issued at a foreclosure sale within the list of means by which a bulk buyer receives the assignment of any of the developer rights.

The bill also amends s. 718.703, F.S., to clarify the status of a mortgagee or its assignee as a bulk assignee or developer. A mortgagee or its assignee does not become a developer if it acquires condominium units and receives an assignment of some or all of a developer rights. However, the mortgagee or its assignee would be deemed a developer if exercises any of the developer rights other than those described in subsection (2) of s. 718.703, F.S., bulk buyers.

Distressed Condominium Relief Act – Developer Rights (Section 8)

The bill amends s. 718.704, F.S., to revise the provisions relating to the assignment of developer rights by a "bulk assignee" and "bulk buyer." It provides that the bulk assignee assumes the obligations of a developer when it acquires title to the units. This clarifies that the assumption of developer obligations is prospective.

The bill amends subsections (1) and (2) of s. 718.704(1), F.S., to provide that the bulk assignee is liable for the developer's warranties expressly provided in the prospectus, offering circular, or contract for purchase and sale.

The bill amends s. 718.704(5), F.S., to provide that the assignment of developer rights may be made by a mortgagee or assignee who has acquired title to the units and received an assignment of rights. It also clarifies that the previous bulk assignee may assign developer rights if the developer rights were held by the predecessor in title to the bulk assignee.

The bill also clarifies that the instrument that assigns the developer the assignment of rights must be recorded in the public records. It further provides that any subsequent purported bulk assignee may still qualify as a bulk buyer.

Distressed Condominium Relief Act – Transfer of Control (Section 9)

The bill amends s. 718.705, F.S., to clarify the provisions relating to turnover of control of the condominium from a “bulk assignee” to the unit owners. It clarifies that a condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a purchaser, or owned by an owner other than the developer, until the condominium parcel is conveyed to an owner who is not a bulk assignee.

The bill also provides that the bulk assignee is not required to deliver items and documents that he or she does not possess if some of the items were or should have been in existence before the bulk assignee acquired the units.

Distressed Condominium Relief Act – Disclosures (Section 10)

The bill amends s. 718.706, F.S., to revise the provisions relating to bulk assignee and bulk buyers offering units for sale or lease. The bill amends ss. 718.706(1) and (2), F.S., to clarify that the documents must be filed, provided or disclosed before offering more than seven units in a single condominium for sale or lease for a term exceeding five years.

The bill also amends s. 718.706(1), F.S., to revise the required disclosure that bulk assignees and bulk buyers must include in purchase contracts. In current law the disclosure give notice when the financial information report required under s. 718.111(13), is not available. The bill revises the disclosure to clarify that it relates to all or a portion of the report. It also revises the disclosure to clarify that the financial information report relates to the period before the seller’s acquisition of the unit instead of the time period immediately proceeding the fiscal year of the association.

The bill provides that the disclosure requirements in s. 718.706(2), F.S., applies to tenants under a lease for a term exceeding 5 years.

The bill amends s. 718.706(5), F.S., to exempt bulk assignees and bulk buyers from the filing and disclosure requirements in subsection (1) and (2) of s. 718.706, F.S., if all of the units they own are offered and conveyed to a single purchaser in a single sale. The bill deletes the current provisions in this subsection that requires the bulk buyer to comply with the requirements in the declaration for the transfer of a unit. It also deletes the provision that the bulk buyer is not entitled to any exemptions afforded a developer or successor developer under ch. 718, F.S., regarding the transfer of a unit.

Distressed Condominium Relief Act – Time Limits for Classification (Section 11)

The bill amends s. 718.707, F.S., to provide that a person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2012. This provision appears to create a two-year window for classification as a bulk assignee or bulk buyer.

Cooperatives – Rents and Assessments (Section 12)

The bill amends s. 719.108(10), F.S., to provide that a tenant may be required by the association to pay all unpaid rent due to the association. The tenant must continue to make payments to the association until all of the unit owner's monetary obligations to the association have been paid in full. Current law only authorizes the association to demand payment from the tenant for any future monetary obligations of the unit owner. The bill requires that the tenant's payment must be applied to the unit owner's most delinquent monetary obligation.

Comparable provisions for collecting a unit owner's unpaid monetary obligations from their tenant are provided in the bill for condominium associations in s. 718.116(11), F.S., and for homeowners' association in s. 720.3085(8), F.S.

Cooperatives – Obligations of Owners (Section 13)

The bill amends s. 719.303(1), F.S., which sets forth the provisions for fines by cooperative associations, to delete the exemption for unoccupied units.

The bill creates s. 719.303(4), F.S., to authorize cooperative associations to suspend a unit owner's use rights if the unit owner is delinquent for more than 90 days in the payment of a monetary obligation to the association. The suspension may be until the monetary obligation is paid. The suspension may be directed to the right of a unit owner or a unit's occupant, licensee, or invitee, to use common elements, common facilities, or any other association property. The association cannot suspend the right to use limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators. For the suspension of use rights, the notice and hearing requirements in s. 719.303(3), F.S., do not apply.²⁹

The bill creates s. 719.303(5), F.S., to authorize cooperative associations to suspend the voting rights of members who are delinquent for more than 90 days in the payment of a monetary obligation to the association. The suspension would end when all due or unpaid monetary obligations are paid. For the suspension of voting rights, the notice and hearing requirements in s. 719.303(3), F.S., also do not apply.

The bill creates s. 719.303(6), F.S., to provide that all suspensions of use rights under subsection (4) and voting rights under subsection (5) must be approved at a properly noticed board meeting. Once approved, the unit owner and, if applicable, the unit's occupant, licensee, or invitee, must be given notice by mail or hand delivery.

The suspension provisions in s. 719.303, F.S., are substantially similar to the suspension provisions in the bill for condominiums in s. 718.303, F.S., and for homeowners' associations in s. 720.305, F.S.

²⁹ Section 719.303(3), F.S., requires reasonable notice and opportunity for a hearing before a committee of unit owners before a cooperative association may levy a fine. The fine cannot be levied if the committee does not agree with the fine.

Homeowners' Associations - Official Records (Section 14)

The bill revises the provisions related to access to the official records of a homeowners' association. It amends s. 720.303(5)(c)1., F.S., which relate to access to records protected by the lawyer-client privilege, to apply the access restriction to records prepared in anticipation of litigation or proceedings. It deletes the current reference to the litigation being imminent civil or criminal litigation or an imminent adversarial proceeding.

The bill amends s. 720.303(5)(c)3., F.S., which relates to personnel records that are not accessible to unit owners, to permit unit owners to have access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee.

The bill amends s. 720.303(5)(c)5., F.S., by adding unit owner facsimile numbers as a record to be maintained by the association. It replaces the term "electronic mail addresses" with the term "email address."

Homeowners' Associations – Obligations of Members (Section 15)

The bill revises the suspension or use and voting rights provisions in s. 720.305, F.S.

The bill creates s. 720.305(2), F.S., by deleting the provision authorizing the suspension of rights when a unit owner is more than 90 days delinquent in the payment of a monetary obligation. The bill moves the deleted provision to s. 718.305(3), F.S. Regarding the suspension of use rights when a member is more than 90 days delinquent in the payment of a monetary obligation, the s. 720.305(3), F.S., provides that the notice and hearing requirements of subsection (2) of s. 720.305, F.S., do not apply.³⁰

The bill creates s. 720.305(2)(a), F.S., to authorize the homeowners' association to suspend, for a reasonable period of time, the rights of a member or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel, or its occupant, licensee, or invitee, to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. The bill requires that the association's governing documents must provide for this authority before it can exercise its suspension authority.

The bill amends s. 720.305(2)(a), F.S., to delete the provision that the suspension of use rights do not apply to the portion of the common areas that must be used to access the parcel or its utility service. The bill moves this provision to the new subsection (3) of s. 720.305, F.S.

The bill amends s. 718.305(4), F.S., which relates to suspending the voting rights of a member due to nonpayment of a monetary obligation, to provide that the notice and hearing requirement for fines in subsection (3) do not apply to suspensions under this subsection.

³⁰ Section 719.303(2), F.S., requires reasonable notice and opportunity for a hearing before a committee of unit owners before a cooperative association may levy a fine. The fine cannot be levied if the committee does not agree with the fine.

The bill creates s. 718.303(5), F.S., to provide that all suspensions of use rights under subsection (3) and voting rights under subsection (4) must be approved at a properly noticed board meeting. Once approved, the unit owner and, if applicable, the unit's occupant, licensee, or invitee, must be given notice by mail or hand delivery.

The suspension provisions in s. 720.305, F.S., are substantially similar to the suspension provisions in the bill for condominiums in s. 718.303, F.S., and for cooperative associations in s. 719.303, F.S.,

Homeowners' Associations – Assessments (Section 16)

The bill amends s. 720.3085(1)(a), F.S., to provide that a claim of lien secures any reasonable expenses for collection services relating to the delinquent account which the association incurred before it filed the claim.

The bill amends s. 720.3085(8), F.S., to provide that a tenant may be required by the association to pay all unpaid rent due to the association. The tenant must continue to make payments to the association until all of the unit owner's monetary obligations to the association have been paid in full. Current law only authorizes the association to demand payment from the tenant for any future monetary obligations of the unit owner. The bill requires that the tenant's payment must be applied to the unit owner's most delinquent monetary obligation.

Comparable provisions for the collecting a homeowner's unpaid monetary obligations from their tenant are provided in the bill for condominium association in s. 718.111.116(5), F.S., and for cooperatives in s. 719.108(10), F.S.

Homeowners' Associations – Bulk Service Contracts (Section 17)

The bill amends s. 720.309, F.S. to authorize homeowners associations to contract for communications services, as defined in s. 202.11, F.S., information services, or Internet services on a bulk rate basis. The association's governing documents must authorize such contracts before the authority can be exercised. However, if the governing documents do not authorize such contract, the board may enter into the contract, and the cost of the service will be an operating expense to be allocated on a per-unit basis rather than a percentage basis. The costs will be assessed on a per-unit basis even if the declaration provides for other than an equal sharing of operating expenses.

The bill also provides that any contract entered into before July 1, 2011, in which the cost of the service is not equally divided among all homeowners, may be changed to allocate the cost equally among all parcels. The vote to change the allocation must be by the vote of a majority of the voting interests present at a regular or special meeting of the association.

The bill creates s. 720.309(2)(a), F.S., to permit the homeowners to terminate a bulk rate contract entered into by the board of directors. The vote to terminate the contract must be by the majority of the voting interests present at the next regular or special meeting of the association, whichever occurs first. The contract would be deemed ratified if not terminated at that meeting.

The bill creates s. 720.309(2)(b), F.S., to permit the following specified homeowners to elect not to receive bulk services, or be required to pay for the costs allocated to their property:

- A hearing-impaired or legally blind parcel owner who does not occupy the parcel with a non-hearing-impaired or sighted person; or
- Any parcel owner receiving Social Security supplemental income.

The expense of the contract must be shared among all the participating parcel owners, and the payment of the expense may be enforced using the provision in s. 720.3085, F.S., which relate to the enforcement of assessment payments.

The cost will be allocated to the homeowner whether or not the homeowner buys the contracted communication service or has contracted with another communication service provider. Payments can be enforced by the association by securing a lien on the property under s. 720.3085, F.S. The homeowner's property may be foreclosed upon by the association for nonpayment of the assessment for the communication service. Communication services under s. 202.11(2), F.S., include:

means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added.

It does not include, among other items, Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

The bill creates s. 720.309(2)(c), F.S., to provide that any parcel owner or tenant must be afforded access to any available franchised or licensed cable television service paid directly to the service provider by the resident. The resident or the cable or video service provider cannot be required to pay anything of value in order to obtain or provide such service, except those charges normally paid for like services by other residents of single-family homes not located in the community but which are within the same franchised or licensed area, and except for installation charges. Such charges may be agreed to between the resident and the provider.

Effective Date (Section 18)

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Tenants of condominium and cooperative unit owners and homeowners' association parcel owners may be required to make payments to the association if the owners owe any monetary payments to the association. The tenants would be entitled to deduct the amount of any payments they make to the association from their rent payment.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill amends s. 718.111(12)(a)7., F.S., to provide that the email and facsimile addresses of unit owners may not be accessible to unit owners if the unit owner has consented to receive notice via electronic transmission in accordance with subparagraph (12)(c)5 of s. 718.111, F.S. This provision is unclear. The cross reference to subparagraph (12)(c)5 of s. 718.111, F.S., does not relate to consent to receive notice via electronic transmission.

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.)

None.

B. Amendments:

None.

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