

**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.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: SB 440

INTRODUCER: Senator Altman

SUBJECT: Condominiums

DATE: February 7, 2014

REVISED: \_\_\_\_\_

|    | ANALYST         | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|-----------------|----------------|-----------|--------------------|
| 1. | <u>Oxamendi</u> | <u>Imhof</u>   | <u>RI</u> | <u>Pre-meeting</u> |
| 2. | _____           | _____          | <u>JU</u> | _____              |

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**I. Summary:**

SB 440 amends several provisions in s. 718.112, F.S., which specifies the provisions that must be included in the bylaws of condominiums, to distinguish the bylaws requirements for residential condominiums from those for commercial condominiums. The bill limits the following bylaw requirements to residential condominiums:

- The time periods for associations to respond to a unit owner’s written inquiries;
- The requirements for the election of board members, the use of staggered terms for members of the board, and the use of limited and general proxies;
- Prohibitions on persons who are not eligible to serve on the board of a condominium association, including co-owners of a unit in certain association, persons who have been suspended, persons who are delinquent in the payment of monetary obligation due to the association, and persons convicted of a felony;
- The pre-election certification requirements for newly elected or appointed board members; and
- The requirement that the bylaws of the association must provide for mandatory nonbinding arbitration of disputes by the Division of Florida Condominiums, Timeshares, and Mobile Homes with the Department of Business and Professional Regulation.

The bill also limits the requirement that associations must initiate an application for a building permit for the required installation of a sprinkler system by the specified date to residential condominiums. The bill also extends the specified date by which residential condominium associations must make the application for a building permit from the end of 2019 to January 1, 2020.

**II. Present Situation:**

**Condominium**

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.”<sup>1</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>2</sup> 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.<sup>3</sup>

A declaration “may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.”<sup>4</sup> A declaration of condominium may be amended as provided in the declaration.<sup>5</sup> 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.<sup>6</sup> Condominiums are administered by a board of directors referred to as a “board of administration.”<sup>7</sup>

Section 718.103(8), F.S., defines the term “common elements” to mean the portions of the condominium property not included in the units.

Section 718.103(12), F.S., defines the term “condominium parcel” to mean a unit, together with the undivided share in the common elements appurtenant to the unit.

Section 718.103(19), F.S., defines the term “limited common elements” to mean those common elements that are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.

Section 718.103(23), F.S., defines the term “residential condominium” to mean:

a condominium consisting of two or more units, any of which are intended for use as a private temporary or permanent residence, except that a condominium is not a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three units are intended to be used for private residence, and are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. With respect to a condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use. With respect to a timeshare condominium, the timeshare instrument as defined in s. 721.05(35) shall govern the intended use of each unit in the condominium. If a condominium is a

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<sup>1</sup> Section 718.103(11), F.S.

<sup>2</sup> Section 718.104(2), F.S.

<sup>3</sup> *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

<sup>4</sup> Section 718.104(5), F.S.

<sup>5</sup> See s. 718.110(1)(a), F.S.

<sup>6</sup> Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

<sup>7</sup> Section 718.103(4), F.S.

residential condominium but contains units intended to be used for commercial or industrial purposes, then, with respect to those units which are not intended for or used as private residences, the condominium is not a residential condominium. A condominium which contains both commercial and residential units is a mixed-use condominium and is subject to the requirements of s. 718.404.

### **Division of Florida Condominiums, Timeshares, and Mobile Homes**

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

The division is afforded complete jurisdiction to investigate complaints and enforce compliance with chapter 718, F.S. with respect to associations that are still under developer control.<sup>8</sup> The division 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.<sup>9</sup>

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

### **Condominium Bylaws**

Section 718.112(2), F.S., specifies the provisions that must be included in the bylaws of condominium associations. In relevant part, the association's bylaws must provide that:

- The board of an associations must respond to a unit owner's written inquiry within 30 days of receipt of the inquiry;<sup>10</sup> and
- If the board has sought advice from the division in order to respond to an inquiry from a unit owner, the board must provide a written response to the unit owner within 10 days of receipt of the advice.<sup>11</sup>

Section 718.112(2)(b)2., F.S., provides for the election of members of the condominium association's board. It provides that:

- Unit owners may vote by limited or general proxy;<sup>12</sup>
- Unless the bylaws provide otherwise, or the staggered term of a board member does not expire at the annual meeting, the terms of board members shall at the annual meeting, and such board members may stand for re-election, unless prohibited by the bylaws;<sup>13</sup>

<sup>8</sup> Section 718.501(1), F.S.

<sup>9</sup> Section 718.501(1), F.S. *See* Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 12 ed. (2010-2011) s. 14.2.

<sup>10</sup> Section 718.112(2)(a)2., F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 718.112(2)(b)2., F.S.

<sup>13</sup> Section 718.112(2)(d)2., F.S.

- Co-owners of a unit in associations of more than 10 units or in associations that do not include timeshare units or interests may not serve on the board at the same time;<sup>14</sup>
- A candidate for election to the board must complete the information sheet required under s. 718.112(2)(d)4.a., F.S.;
- Persons who have been suspended by the division or who are delinquent in the payment of monetary obligation due to the association are not eligible for board membership;<sup>15</sup>
- Persons convicted of a felony are not eligible for board membership until their civil rights have been restored;<sup>16</sup>
- Members of the board must be elected by written ballot or voting machine;<sup>17</sup> and
- Within 90 days after being elected or appointed, a newly elected or appointed 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. Alternatively, newly elected or appointed board member may submit a certificate of satisfactory completion of the educational curriculum within one year before the election or 90 days after the election or appointment.<sup>18</sup>

Section 718.112(2)(d)10., F.S., provides that ch. 718, F.S., does not limit the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association.

Section 718.112(2)(d), F.S., also permits associations of 10 or fewer units to, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in their bylaws, which may be proxy specifically delineating the different voting and election procedures.

Section 718.112(2)(k), F.S., requires that the bylaws of the association must provide for mandatory nonbinding arbitration of disputes, as provided in s. 718.1255, F.S. The following types of disputes are excluded from arbitration under s. 718.1255, F.S.:

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or other removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or
- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.<sup>19</sup>

Section 718.112(2)(l), F.S., provides that the local authority having jurisdiction over the property may not require completion of retrofitting with a fire sprinkler system before the end of 2019. By December 31, 2016, an association that is not in compliance with the requirements for a fire

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Section 718.112(2)(d)4., F.S.

<sup>18</sup> Section 718.112(2)(d)4.b., F.S.

<sup>19</sup> Section 718.1255(1), F.S.

sprinkler system and which has not voted to forego retrofitting of such a system is required to initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the association will become compliant by December 31, 2019.

Section 718.112(2)(l)1., F.S., permits condominium associations to vote to forego retrofitting at a duly called membership meeting. Members may vote to forego retrofitting by limited proxy or by a vote personally cast. Section 718.112(2)(l)3., F.S., requires that associations report to the division the membership vote and the recording of a certificate from a licensed electrical contractor that the association is in compliance with the applicable life and safety code, as provided in s. 718.112(2)(l), F.S.

### **III. Effect of Proposed Changes:**

The bill amends several provisions in s. 718.112, F.S., to distinguish the bylaws requirements for residential condominiums from those for commercial condominiums.

The bill limits the following bylaw requirements to residential condominiums:

- The requirement that the board must respond to a unit owner's written inquiry within 30 days of receipt of the inquiry or within 10 days of receipt of the advice from the division in s. 718.112(2)(a)2., F.S.;
- The requirements for the election of board members and the use of limited and general proxies in s. 718.112(2)(b)2., F.S.;
- The requirements for the election of board members the use of staggered terms s. 718.112(2)(d)2., F.S.;
- The prohibition in s. 718.112(2)(d)2., F.S., against co-owners serving on the board at the same time;
- The prohibitions on persons who are not eligible to serve on the board in s. 718.112(2)(d)2., F.S., including persons who have been suspended by the division, persons who are delinquent in the payment of monetary obligation due to the association, and persons convicted of a felony;
- The pre-election certification requirements in s. 718.112(2)(d)4.a., F.S.;
- The requirement that members of the board must be elected by written ballot or voting machine in s. 718.112(2)(d)4., F.S.;
- The provision in s. 718.112(2)(d)10., F.S., that ch. 718, F.S., does not limit the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association.
- The authority in s. 718.112(2)(d), F.S., that permits associations of 10 or fewer units to amend their bylaws to provide different voting and election procedures than is provided in ch. 718, F.S.; and
- The requirement in s. 718.112(2)(k), F.S., that the bylaws of the association must provide for mandatory nonbinding arbitration of disputes, as provided in s. 718.1255, F.S.

The bill amends s. 718.112(2)(l), F.S., to limit the provision that requires associations to initiate an application for a building permit for the required installation of a sprinkler system by the specified date to residential condominiums. The bill also extends the specified date by which

residential condominium associations must make the application for a building permit from the end of 2019 to January 1, 2020.

**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:

According to representatives for condominium associations and the Real Property Probate and Trust Law Section of The Florida Bar, commercial condominiums may incur few expenses by not having to comply with bylaws requirements in ch. 718, F.S., that are more relevant to residential condominiums.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 718.112 of the Florida Statutes.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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