

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 Committee on Regulated Industries

BILL: CS/SB 440

INTRODUCER: Regulated Industries Committee and Senator Altman

SUBJECT: Condominiums

DATE: February 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	_____	_____	<u>JU</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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.

The bill also limits the following requirements to residential condominiums:

- That condominium boards must adopt shutter specifications for each building within each condominium operated by the association;
- That condominium boards cannot refuse to approve a unit owner's installation of hurricane protections that conform to the specifications adopted by the board.
- That the alternative dispute resolution provisions in s. 718.1255, F.S., which provide for the mediation and voluntary non-binding arbitration of certain disputes, do not apply to nonresidential condominiums unless specifically provided for in the declaration of the nonresidential condominium;
- Limitations on the ability of the developer to modify the plot plan for phase condominiums;
- The information related to the development of a phase condominium that must be described in the original declaration of condominium or approved amendment to residential condominiums.

The bill provides that only residential condominiums are residential property for insurance purposes.

The bill also to extend the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015 to July 1, 2016.

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.”¹ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is 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.⁵ If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

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

⁴ Section 718.104(5), F.S.

⁵ See s. 718.110(1)(a), F.S.

less than the owners of two-thirds of the units.⁶ Condominiums are administered by a board of directors referred to as a “board of administration.”⁷

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 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.⁸ 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

⁶ 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.

⁷ Section 718.103(4), F.S.

⁸ Section 718.501(1), F.S.

investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S.⁹

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;¹⁰ 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.¹¹

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;¹²
- 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;¹³
- 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;¹⁴
- 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;¹⁵
- Persons convicted of a felony are not eligible for board membership until their civil rights have been restored;¹⁶
- Members of the board must be elected by written ballot or voting machine;¹⁷ 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

⁹ 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.

¹⁰ Section 718.112(2)(a)2., F.S.

¹¹ *Id.*

¹² Section 718.112(2)(b)2., F.S.

¹³ Section 718.112(2)(d)2., F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 718.112(2)(d)4., F.S.

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.¹⁸

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.¹⁹

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 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.

Vertical Accessibility

Section 553.509(1), F.S., provides that part II of ch. 553, F.S., the Florida Americans with Disabilities Accessibility Implementation Act, and the Americans with Disabilities Act Standards for Accessible Design do not relieve the owner of any building, structure, or facility governed by this part from the duty to provide vertical accessibility to all levels above and below

¹⁸ Section 718.112(2)(d)4.b., F.S.

¹⁹ Section 718.1255(1), F.S.

the occupiable grade level. Section 553.509(2), F.S., provides that buildings, structures, and facilities must, as a minimum, comply with the Americans with Disabilities Act Standards for Accessible Design.

Section 718.112(2)(l)4., F.S., permits condominium associations to forego the retrofitting of improvements required by s. 553.509(2), F.S., upon an affirmative vote of a majority of the voting interests in the affected condominium.

Maintenance-Hurricane Protections

Section 718.113(5), F.S., requires that condominium boards adopt shutter specifications for each building within each condominium operated by the association. The shutter specifications must include color, style, and other factors deemed relevant by the board. All of the specifications adopted by the board must comply with the applicable building code. Section 718.113(5)(a), F.S., authorizes condominium boards to install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection that comply with or exceed the applicable building code. Such installations by the board must be by a contract for products or services in accordance with s. 718.3026, F.S., and be approved by a majority of voting interests of the condominium.

Phase Condominiums

Section 718.403, F.S., permits developers to develop condominiums in phases if the anticipated phases are described in detail in the original declaration of condominium or an amendment to the declaration which has been approved by all the unit owners and unit mortgagees.

The description must include the land which may become part of the condominium and the land on which each phase is to be built, including the metes and bounds or other legal descriptions of the land for each phase, plot plans, and surveys. The plot plans, attached as an exhibit, must show the approximate location of all existing and proposed buildings and improvements that may ultimately be contained within the condominium.

The developer may modify the plot plan as to unit or building types to the extent that such changes are described in the declaration. The developer may also make nonmaterial changes in the legal description of a phase if authorized by the declaration.²⁰

Section 718.403(2)(b)-(f), F.S., provides the additional information that must be described in the original declaration of condominium, or an amendment to the declaration, which amendment has been approved by all unit owners and unit mortgagees and the developer. Section 718.403(2)(b)-(f), F.S., provides:

- (b) The minimum and maximum numbers and general size of units to be included in each phase. The general size may be expressed in terms of minimum and maximum square feet. In stating the minimum and maximum numbers of units, the difference between the minimum and maximum numbers shall not be greater than 20 percent of the maximum.

²⁰ Section 718.403(2)(a), F.S.

(c) Each unit's percentage of ownership in the common elements as each phase is added. In lieu of describing specific percentages, the declaration or amendment may describe a formula for reallocating each unit's proportion or percentage of ownership in the common elements and manner of sharing common expenses and owning common surplus as additional units are added to the condominium by the addition of any land. The basis for allocating percentage of ownership among units in added phases shall be consistent with the basis for allocation made among the units originally in the condominium.

(d) The recreational areas and facilities which will be owned as common elements by all unit owners and all personal property to be provided as each phase is added to the condominium and those facilities or areas which may not be built or provided if any phase or phases are not developed and added as a part of the condominium. The developer may reserve the right to add additional common-element recreational facilities if the original declaration contains a description of each type of facility and its proposed location. The declaration shall set forth the circumstances under which such facilities will be added.

(e) The membership vote and ownership in the association attributable to each unit in each phase and the results if any phase or phases are not developed and added as a part of the condominium.

(f) Whether or not timeshare estates will or may be created with respect to units in any phase and, if so, the degree, quantity, nature, and extent of such estates, specifying the minimum duration of the recurring periods of rights of use, possession, or occupancy that may be established with respect to any unit.

The time for completion of all the phases may not exceed 7 years from the date of the recording of the declaration of condominium.²¹

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 in a single condominium 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 rights specified in this section.

Section 718.704, F.S., provides for the assignment and assumption of developer rights.

²¹ Section 718.403(1), F.S.

Section 718.704, F.S., provides that a bulk assignee assumes all the duties and responsibilities of the developer, and specifies obligations for which the bulk assignee is not liable.

Section 718.707, F.S., specifies 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, 2015. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

III. Effect of Proposed Changes:

Condominium Bylaws

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 give a substantive response 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 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 pre-election notice and information requirements in s. 718.112(2)(d)4.a., F.S.;
- The requirement that a newly elected or appointed director must certify in writing that he or she has read the association's documents within 90 days of being elected or appointed in s. 718.(2)(d)4.b., 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; 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 clarifies 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.

The bill amends s. 718.112(2)(l)4., F.S., to limit, to residential condominiums, the provision that permits condominium associations to forego the retrofitting of improvements required by s. 553.509(2), F.S., upon an affirmative vote of a majority of the voting interests in the affected condominium.²²

Maintenance-Hurricane Protections

The bill amends s. 718.113(5), F.S., to limit the requirement that condominium boards adopt shutter specifications for each building within each condominium operated by the association to residential condominiums. The bill amends s. 718.113(5)(a), F.S., to limit, to residential condominiums, the board's authority to install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection that comply with or exceed the applicable building code (hurricane protections). The bill also amends s. 718.113(5)(d), F.S., to limit, to residential condominiums, the provision that prohibits condominium boards, notwithstanding the any other provision in the condominium documents, from refusing to approve a unit owner's installation of hurricane protections that conform to the specifications adopted by the board.

Alternative Dispute Resolution

The bill creates s. 718.1255(6), F.S., to provide that the alternative dispute resolution provisions in this section do not apply to nonresidential condominiums unless specifically provided for in the declaration of the nonresidential condominium.

Condominiums as Residential Property

The bill amends s. 718.1256, F.S., to provide that residential condominiums are classified as residential property for property and casualty insurance risk classification.

Phase Condominiums

The bill amends s. 718.403(2)(a), F.S., to limit the ability of the developer to modify the plot plan as to unit or building types only to the extent that such changes are described in the declaration to residential condominiums.

The bill creates s. 718.403(9), F.S., to limit the information that must be described, as specified in ss. 718.403(2)(b)-(f), F.S., in the original declaration of condominium or approved amendment to residential condominiums.

Distressed Condominium Relief Act

The bill amends s. 718.707, F.S., to extend the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015 to July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²² Section 552.509, F.S., relates to applicability of the requirements and exceptions of the Florida Americans with Disabilities Accessibility Implementation Act (ss. 553.501-553.513, F.S.) and the Americans with Disabilities Act Standards for Accessible Design to provide for vertical accessibility.

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 fewer 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 the following sections of the Florida Statutes: 718.112, 718.113, 718.1255, 718.1256, 718.403, and 718.707.

IX. 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 February 13, 2014:

The committee substitute (CS) s. 718.112(2)(a)2., F.S., to limit, 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. The CS does not reference the limitation to residential condominiums in the provision that requires the board to give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division.

The CS amends s. 718.112(2)(d), F.S., to limit, to residential condominiums, the provision 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.

The CS amends s. s. 718.112(2)(1)4., F.S., to limit, to residential condominiums, the provision that permits condominium associations to forego the retrofitting of improvements required by s. 553.509(2), F.S., upon an affirmative vote of a majority of the voting interests in the affected condominium.

The CS amends s. 718.113(5), F.S., to limit the requirement that condominium boards adopt shutter specifications for each building within each condominium operated by the association to residential condominiums. The CS also amends s. 718.113(5)(a), F.S., to limit, to residential condominiums, the board's authority to install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection that comply with or exceed the applicable building code. The bill also amends s. 718.113(5)(a), F.S., to limit, to residential condominiums, the provision that prohibits condominium boards from refusing to approve a unit owner's installation of hurricane protections that conform to the specifications adopted by the board.

The CS creates s. 718.1255(6), F.S., to provide that the alternative dispute resolution provisions in this section do not apply to nonresidential condominiums unless specifically provided for in the declaration of the nonresidential condominium.

The CS amends s. 718.1256, F.S., to provide that residential condominiums are classified as residential property for property and casualty insurance risk classification.

The CS amends s. 718.403(2)(a), F.S., to limit the ability of the developer to modify the plot plan as to unit or building types only to the extent that such changes are described in the declaration to residential condominiums. The bill creates s. 718.403(9), F.S., to limit the information that must be described, as specified in ss. 718.403(2)(b)-(f), F.S., in the original declaration of condominium or approved amendment to residential condominiums.

The CS amends s. 718.707, F.S., to extend the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015 to July 1, 2016.

B. Amendments:

None.