

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2274

SPONSOR: Committee on Regulated Industries and Senator Saunders

SUBJECT: Condominium Associations

DATE: April 15, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

The bill amends Chapter 718, F.S., the condominium statutes, to provide more tailored requirements with respect to multicondominium associations. "Multicondominium" is defined as "a real estate development that contains more than one condominium operated by one condominium association." The bill creates a statute establishing general requirements for multicondominiums and amends statutes to make provision for multicondominiums concerning the following subjects: common expenses of multicondominium associations; developer liability for those common expenses; amendments to condominium declarations; provision of financial report or financial statements to unit owners and the method of presentation of multicondominium receipts and expenses; making material alterations or substantial additions to the common elements of a condominium operated by a multicondominium association; and disclosures that must be made in a prospectus or offering circular if a condominium is or may become part of a multicondominium development.

The bill also amends the following subjects in provisions affecting all condominiums: provision of financial report or financial statements to unit owners; costs of educational courses relating to condominiums as common expenses; and appurtenances to each condominium unit.

Finally, the bill requires the Department of Business and Professional Regulation (department) to prepare legislation on master condominium associations to be presented to the President of the Senate and the Speaker of the House of Representatives on or before November 15, 1999.

The bill substantially amends the following sections of the Florida Statutes: 718.102, 718.103, 718.104, 718.106, 718.110, 718.111, 718.112, 718.113, 718.115, 718.116, 718.117, 718.5019, 718.504, and 624.462. It also creates section 718.405 of the Florida Statutes.

**II. Present Situation:**

Although multicondominium associations are not expressly addressed in Chapter 718, F.S., they do exist and that chapter is applied to them. However, its application to these associations is sometimes uncertain. In 1998, the department's Bureau of Condominiums agreed to organize and facilitate meetings at which knowledgeable and interested parties could discuss and draft legislative language that would address education on condominium issues and resolve many of the concerns relating to the regulation of multicondominium associations and master condominium associations. Six such meetings were held. This bill reflects the work product of that group as to education and multicondominium associations.

**III. Effect of Proposed Changes:**

**Section 1** amends s. 718.102, F.S., to state an additional purpose for the Condominium Act, which is to provide information to condominium unit owners and condominium association board members regarding their rights and responsibilities.

**Section 2** amends s. 718.103, F.S., to define "multicondominium" as a real estate development that contains more than one condominium operated by a single condominium association. It also amends the definition of "voting interest" to address multicondominium associations, providing that in a multicondominium association, the voting interest of the association means the total votes in association affairs distributed to the owners of all units in all condominiums operated by the association. When a vote of the owners in any specific condominium on matters related to that condominium is required or permitted, the voting interest of the condominium means the total votes distributed to the owners of units in that condominium.

**Section 3** amends s. 718.104, F.S., to address developer liability for common expenses in multicondominiums. If a developer has reserved the right in a declaration of condominium recorded on or after July 1, 1999, to create a multicondominium development, the declaration of condominium for the first such condominium must provide a specific formula for determining the fractional or percentage shares of liability for common expenses and of ownership of the common surplus to be allocated to the units in each condominium operated by the multicondominium association. If the first declaration does not contain this statement, the share of liability for the common expenses of the association and of ownership of the common surplus of the association allocated to each unit shall be a fraction of the whole, the numerator being "one" and the denominator being the total number of units in all condominiums operated by the association.

**Section 4** amends s. 718.106, F.S., to provide that one of the appurtenances to each condominium unit is the right to transfer exclusive common element use rights to other units or unit owners to the extent authorized by the original declaration or amendments thereto. The bill also provides that declaration amendments affecting the right to transfer use rights may be adopted in the manner required for regular amendments to the declaration and not pursuant to the percentage vote required to modify unit appurtenances. It states that "this paragraph is intended to clarify existing law." (The percentage of approval necessary to adopt an amendment to a declaration is generally set out in the declaration. If it is not, s. 718.110, F.S., provides that an amendment requires approval by the owners of not less than two-thirds of the units. However, unless otherwise provided in the declaration, an amendment to materially alter appurtenances

cannot be adopted unless the record owner of the unit and all record owners of liens on it join in the execution of the amendment and unless all the record owners of all other units approve the amendment.)

Section 4 also provides that the appurtenance of membership in a condominium association includes the right to seek election to the board.

**Section 5** amends s. 718.110, F.S., to provide that in a multicondominium development, unless approval by a greater number is uniformly required in the declarations of all condominiums comprising that multicondominium development, an amendment may not change the fractional or percentage share of liability for the common expenses and of ownership of the common surplus without the approval of at least a majority of the total voting interests of each condominium. The bill authorizes amending the declaration of any existing condominium for two specific purposes upon the approval of at least a majority of the total voting interests of each condominium operated by the association, unless the declaration provides for a greater number. The two specified purposes are to set forth a formula already in use, but not previously stated in the declaration, for sharing common expenses and common surplus; and, to create or enlarge a multicondominium development by the merger or consolidation of two or more condominium associations.

**Section 6** amends s. 718.111, F.S. Currently, this section requires that within 60 days after the end of the fiscal or calendar year, the board must mail or furnish by personal delivery to each unit owner a complete a financial report or a complete set of financial statements. The bill requires that the board have financial report or financial statements prepared within 90 days. Then, within 14 days after the board receives the report or statements, it must mail or deliver a copy to all unit owners or notify each of them that a copy is available at no charge.

In a multicondominium, the financial report must show receipts and expenses for the association and for each condominium operated by a multicondominium association. Also, the reserve disclosures must separately show reserves accumulated and expended on behalf of the unit owners and by the unit owners of specific condominiums.

In a multicondominium, financial statements may be presented on a combined basis if notes or supplementary information disclose the revenues, expenses, and changes in fund balances for the association and for each condominium. Additionally, the financial statements, notes, or supplementary information must disclose the revenues and common expenses of the association and the method used to allocate the revenues, expenses, and common surplus of the association to the unit owners.

A multicondominium association is not prohibited from commingling its various operating funds of the condominiums it operates, or commingling its various reserve funds; however, each operating fund and reserve fund that is commingled must be accounted for separately.

**Section 7** amends s. 718.112(2), F.S., regarding bylaws. The bill strikes the requirement that “[i]n order to be eligible for board membership a person must meet the requirements set forth in the declaration.” *See*, s. 718.112(2)(d)1. This sentence was added pursuant to ch. 98-322, Laws of Florida, and has been construed to allow a residency requirement in a condominium declaration.

DBPR, In re: Petition for Declaratory Statement, Harry Starr, Golden Lakes Village Condominium Association "A", Inc. DS 98-029, at 10.

A multicondominium association must adopt a separate budget of common expenses for each condominium it operates and a separate budget of common expenses for the association.

In a multicondominium association, the only voting interests eligible to vote on questions about waiving or reducing the funding of reserves or using existing reserve funds for other purposes are the voting interests of the units subject to the assessment to fund such reserves.

**Section 8** amends s. 718.113, F.S., prohibiting material alterations or substantial additions made to the common elements of a condominium operated by a multicondominium association unless the alteration or addition is approved as provided in the declaration of the affected condominium(s). If a declaration does not provide for this process, 75 percent of the total voting interests in each affected condominium must approve. Material alterations or substantial additions to association real property must also be done as provided in the articles of incorporation or bylaws. If the articles do not provide for this process, 75 percent of the total voting interests of the association must approve.

**Section 9** amends s. 718.115, F.S., to provide that, with multicondominium associations, the common expenses of the association are those not directly attributable to the operation of a specific condominium, and common expenses of the condominium are those that are directly attributable to the operations of that condominium. Common expenses of the multicondominium may include categories of expenses related to property or common elements within a specific condominium if all members of the association have use rights therein or receive other tangible economic benefits. Such common expenses must be identified in the declaration or bylaws.

If provided in the bylaws, the actual cost of registration or tuition for an educational course relating to condominiums and of mileage for travel to the course are permissible common expenses.

In a multicondominium association, the total common surplus owned by a unit owner consists of the unit owner's share of the common surplus of the multicondominium association and that owner's share of the common surplus of the condominium in which the owner's unit is located.

**Section 10** amends s. 718.116, F.S. Subsection 718.116 (9), F.S., currently provides that if the declaration allows, a developer may be excused from payment of his share of the common expenses assessments for a stated period of time subsequent to the recording of the declaration of condominium. However, the developer must pay the common expenses incurred during that period which exceed the amount assessed against other unit owners. Also, a developer may be excused from payment of his or her share of the common expense during a period of time that his or her has guaranteed that the assessment for common expenses imposed on the unit owners would not increase over a stated dollar amount and has obligated himself or herself to pay any amount of common expenses incurred during that period and not produced by the assessments at the guaranteed level receivable from other unit owners.

Under the bill, in a multicondominium situation, if a developer is excused from paying assessments for common expense assessments, then the developer: 1) must pay those common expenses of the condominium affected by the guarantee, including funding of reserves, which is in excess of the amount assessed against nondeveloper units; and 2) the developer must pay the portion of the common expenses of the association, including funding of reserves, allocated to the units within the condominium affected by the guarantee which is in excess of the amount assessed against the nondeveloper units.

**Section 11** amends s. 718.117, F.S., on termination of condominiums, to state that the section does not apply to the termination of a condominium incident to a merger of a condominium with another condominium.

**Section 12** creates s. 718.405, F.S., to provide general requirements for multicondominiums. An association may operate more than one condominium if the declarations of affected condominiums so provide and disclose or describe the following:

- the manner or formula by which assets, liabilities, and common expenses will be apportioned among the units within condominiums operated by the association;
- whether unit owners in other condominiums, or any other persons, will have use rights to recreational areas, facilities, or amenities, and the formula by which other users will share the common expenses related thereto;
- the recreational facilities or amenities the developer has committed to provide that are owned or leased by the association but are not included within any condominium, although the developer may reserve the right to add facilities or amenities by placing the following in conspicuous type in the prospectus for each condominium: RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OF THE ASSOCIATION;
- the voting rights of the owners of each unit in the election of directors and other matters.

If a developer decides not to add condominiums, he must notify each unit owner by first-class mail. If the declaration requires a developer to convey lands or facilities to the association and he or she fails to do so, any owner of a unit or the association may enforce the requirement or bring an action for specific performance or for damages.

The declaration creating each condominium to be operated by the association cannot contain any provision relating to allocation of assets, liabilities, or common expenses which is inconsistent with Chapter 718, F.S., or with the provisions of the declaration of any other condominium to be operated by the association.

The section does not prevent or restrict the formation of a multicondominium development by the merger or consolidation of two or more condominium associations.

**Section 13** amends s. 718.5019, to provide that members of the Advisory Council on Condominiums are to continue to serve until their replacement has been appointed.

**Section 14** amends s. 781.504, F.S., to provide disclosures that must be made in a prospectus or offering circular if a condominium is or may become part of a multicondominium development, including:

- in conspicuous type, the statement THIS CONDOMINIUM IS (MAY BE) PART OF A MULTICONDOMINIUM DEVELOPMENT IN WHICH OTHER CONDOMINIUMS WILL (MAY) BE OPERATED BY THE SAME ASSOCIATION;
- a summary of the provisions in the declaration and bylaws that establish and provide for the operation of the multicondominium development;
- a statement of the minimum and maximum number of condominiums and the minimum and maximum number of units therein that may be operated by the association, and the latest date by which the exact numbers will be finally determined;
- a statement of whether any of the condominiums may include nonresidential units and of the permitted purpose of such units; and
- a general description of the land on which any additional condominiums to be operated by the association may be located.

**Section 15** amends s. 624.462, F.S., to correct a cross-reference.

**Section 16** requires the Department of Business and Professional Regulation to prepare draft legislation on master condominium associations for consideration at the 2000 Regular Session of the Legislature. The legislation may address: the powers and duties of a master condominium association; requirements regarding association meetings, membership, voting, records, elections, documents, merger, assessments, financial reporting, budget, and turnover; basic rights and obligations of members and affected persons; definitions; powers and duties as well as regulatory and rulemaking responsibilities of the department; and such other matters as the department deems necessary to address master condominium association concerns. The draft legislation must be presented to the President of the Senate and the Speaker of the House of Representatives on or before November 15, 1999.

**Section 17** provides an effective date of July 1, 1999.

IV. **Constitutional Issues:**

A. **Municipality/County Mandates Restrictions:**

None.

B. **Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate; associations may benefit due to the revisions on provision of association financial reports and financial statements.

C. Government Sector Impact:

The Department of Business and Professional Regulation's Bureau of Condominiums may benefit from clarification of the application of Chapter 718, F.S., to multicondominium associations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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