

# 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 1286

SPONSOR: Committee on Regulated Industries and Senator Saunders

SUBJECT: Residential Associations

DATE: April 14, 2000 REVISED: \_\_\_\_\_

|    | ANALYST       | STAFF DIRECTOR | REFERENCE | ACTION              |
|----|---------------|----------------|-----------|---------------------|
| 1. | <u>Wiehle</u> | <u>Guthrie</u> | <u>RI</u> | <u>Favorable/CS</u> |
| 2. | _____         | _____          | _____     | _____               |
| 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 containing two or more condominiums all of which are operated by the same 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 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, appurtenances to each condominium unit, and unit owner payments for expenses of a master antenna television service.

The bill repeals the Advisory Council on Condominiums and creates a condominium study commission.

The bill prohibits a homeowners' association from prohibiting display of a United States flag.

The bill substantially amends the following sections of the Florida Statutes: 718.103, 718.104, 718.106, 718.110, 718.111, 718.112, 718.113, 718.115, 718.116, 718.117, 718.403, 718.504, 721.13, 718.501, and 617.3075. It also creates section 718.405 of the Florida Statutes and repeals section 718.5019 of the Florida Statutes.

## II. Present Situation:

Although the term “multicondominium association,” which has come to mean an association that contains more than one condominium operated by that association, is not defined or used in ch. 718, F.S., the chapter does allow and govern multicondominium associations in that it expressly allows an association to operate more than one condominium. s. 718.11(1)(a), F.S. There is, however, little statutory guidance regarding the operation of a multicondominium association. Additionally, existing statutory language is, in certain instances, confusing when applied to multicondominium associations.

## III. Effect of Proposed Changes:

**Section 1** amends s. 718.103, F.S., to define “multicondominium” as a real estate development containing two or more condominiums all of which are operated by the same condominium association. It also amends the definition of “voting interest” to address multicondominium associations, providing that in a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners 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 interests of the condominium are the total votes distributed to the owners of units in that condominium.

**Section 2** amends s. 718.104, F.S., regarding the creation of condominiums and the contents of a declaration of condominium (declaration).

*Present Situation:* When creating a condominium, a developer is required to record in the public records a declaration of condominium. After such recording, s. 718.104(2), F.S., requires the developer to file the recording information with the Division of Florida Land Sales, Condominiums, and Mobile Homes (the Division) within 30 business days.

*Effect of Proposed Changes:* The filing requirement is changed from 30 business days to 120 calendar days.

*Present Situation:* A declaration must state as a percentage or fraction the undivided share of the common elements appurtenant to each unit which, in the aggregate, must equal the whole. The proportion or percentages of and manner of sharing common expenses and owning common surplus for a residential condominium must be the same as the undivided share in the common elements.

*Effect of Proposed Changes:* Specifies that a declaration must state the undivided share of ownership of the common surplus as a percentage or fraction of the whole. Provides that the percentage or fractional shares of liability for the common expenses of the condominium and ownership of the common surplus must be the same as the undivided share of ownership in the common elements and common surplus appurtenant to each unit. A declaration recorded on or after July 1, 2000, in which the developer reserves the right to create a multicondominium development, must state, or 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 to be operated by the association. If the declaration

does not set forth such information, then the share of liability for the common expenses of the association and ownership of the common surplus of the association allocated to each unit shall be a fraction of the whole where the numerator is one and the denominator is the total number of units in the condominiums operated by the association.

**Section 3** amends s. 718.106, F.S., regarding condominium parcels, appurtenances, possession and enjoyment.

*Present Situation:* A condominium unit is a real property interest. When a condominium unit is sold, certain legal rights must be sold with the unit, known as appurtenances.

Section 718.107, F.S., prohibits a unit owner from transferring the rights in common elements separate from sale or transfer of the appurtenant condominium unit. The courts have ruled that s. 718.107, F.S., prohibits the transfer of appurtenances separate from the condominium unit. *See, Brown v. Rice*, 716 So.2d 807 (Fla. 5th DCA 1998). In *Brown*, a unit owner had purchased from the developer a reserved garage space (not all units in the condominium had a reserved garage space). Some time later, that unit owner attempted to sell the reserved garage space to another unit owner of the same condominium. The court invalidated the sale, ruling that s. 718.107, F.S., prohibited the transfer. The court held that the garage space could not be separated from the original unit to which it was appurtenant.

*Effect of Proposed Changes:* The bill allows a unit owner to transfer rights in common elements to another unit owner, if permitted by the declaration. The bill further permits an association to amend its declaration under the provisions of s. 718.110(2), F.S., to allow the transfer of appurtenances, if the declaration does not already allow it.

**Section 4** amends s. 718.110, F.S., regarding amendment of a declaration.

*Present Situation:* This section refers to certain defined terms such as “common expenses,” “common surplus,” and “voting interests,” but the language is unclear as to how the terms apply to a multicondominium. This section also provides that an amendment to a declaration may be adopted if “all the record owners of all other units approve the amendment”; but how this provision is to apply to a multicondominium association is unclear.

*Effect of Proposed Changes:* The bill clarifies the voting process relating to an amendment to a declaration under subsections (4) or (9) by stating that individual condominium associations within a multicondominium vote to amend their own declarations. The bill also adds subsection (12) relating to multicondominiums to provide that unless approval by a greater number is uniformly required in the declarations of all condominiums comprising a multicondominium, an amendment may not change the fractional or percentage share of liability for the common expenses and of ownership of the common surplus unless approved by at least a majority of the total voting interests of each condominium operated by the multicondominium association. The bill authorizes amendment of a declaration to set forth a formula for sharing common expenses and common surplus that is already in use, but not previously stated in the declaration, and allows the creation or enlargement of a multicondominium development by merger or consolidation of two or more condominium associations.

**Section 5** amends s. 718.111, F.S., regarding a condominium association and its official records.

*Present Situation:* Subsection (12) of s. 718.111, F.S., provides that certain records prepared by an attorney or prepared at the attorney's express direction are not accessible to unit owners.

*Effect of Proposed Changes:* Amends s. 718.111(12), F.S., to clarify that any document protected by the lawyer-client privilege described in s. 90.502, F.S., is not available for inspection by unit owners.

*Present Situation:* Subsection (13) of s. 718.111, F.S., contains financial reporting requirements for condominiums. Within 60 days following the end of the fiscal or calendar year, associations must mail or furnish by personal delivery to each unit owner a complete financial report of actual receipts and expenditures, or a complete set of financial statements prepared in accordance with generally accepted accounting principles, for the preceding year. The report must show the receipts and expenses by accounts and classifications including certain listed examples. The statute is unclear as to whether this section applies to all associations.

Subsection (14) of s. 718.111, F.S., states that the Department of Business and Professional Regulation, Division of Land Sales, Condominiums, and Mobile Homes *shall* adopt rules which *may* require that an association provide a set of financial statements in lieu of the report required by subsection (13). The financial statements must be delivered to the unit owners within 90 days following the end of the previous fiscal year or annually on some other date provided in the bylaws. The division's rules *may* require compiled, reviewed, or audited financial statements and must consider the criteria set forth in s. 718.501(1)(j), F.S. However, if a majority of the voting interests of the association present at a duly called meeting waive the requirement for financial statements, the rules do not apply. If the developer has not turned control of the association over to the unit owners, the developer "may vote to waive" the audit requirement for the first two years of the association's operation; however, after the first two years, waiver must be approved by a majority of voting interests *other* than the developer. The meeting must be held prior to the end of the fiscal year and the waiver is effective for only one year. This section applies only to condominiums with more than 50 units.

*Effect of Proposed Changes:* Merges subsections (13) and (14) into a new subsection (13), and substantially changes the financial reporting requirements for associations, as follows:

- Extends from 60 to 90 days the time within which the board must prepare or have a third party prepare the annual financial report, and requires the association to either mail or hand deliver a copy of the financial report to all unit owners within 21 days after the association receives the report, or alternatively allows the association to provide notice within the 21 days to each unit owner that a copy of the report is available at no charge;
- Requires the Department of Business and Professional Regulation ("DBPR") to adopt rules setting forth uniform accounting principles and standards for all associations, including multicondominium associations, and directs DBPR to consider the number of members and annual revenue of an association when adopting such rules;
- Requires an association to prepare financial statements in accordance with generally accepted accounting principles. The required statements are in three levels based on the association's annual revenues. These financial levels and required statements, together

with the exceptions discussed below for associations under 50 units or \$100,000 or less in revenues, are from current administrative rules regarding condominium associations at F.A.C. 61B-22.006. Thus, there should be no change in practice for associations nor any increase in cost to associations or to the public. The required statements and financial levels are:

Compiled if revenues are less than \$200,000,  
Reviewed if between \$200,000 and \$400,000, or  
Audited if in excess of \$400,000;

- Provides limited exceptions, for an association operating less than 50 units or with \$100,000 or less in annual revenues, to prepare a Report of Cash Receipts and Expenditures disclosing certain specified expenses instead of preparing financial statements;
- Authorizes the board of an association to choose a financial reporting method above that which is required by law; and
- Authorizes the members of an association to permit a lower level of review, or to prepare a Report of Cash Receipts and Expenditures, the approval of which must be at a meeting of the membership and which must be renewed annually; and further limits the right of a developer to vote for a lower level of review after the end of the second fiscal year of operation of the association.

*Present Situation:* Subsection (15) of s. 718.111, F.S., provides that all funds of an association must be maintained separately in the association's name and that reserve and operating funds must not be commingled; provides an exception to the prohibition on commingling if combined for investment purposes so long as the funds are separately accounted for and so long as the overall account balance does not fall below the minimum reserve; and provides that certain persons may not commingle association funds with personal funds or with funds of any other condominium or community association.

*Effect of Proposed Changes:* Rewrites the subsection to include provisions for multicondominiums; provides that a multicondominium association may commingle the operating funds of separate condominiums and the reserve funds of separate condominiums, and that operating and reserve funds may be commingled together for investment purposes only; prohibits certain persons from commingling the funds of an association with personal funds or with the funds of other condominium or community associations.

**Section 6** amends s. 718.112(2)(d), F.S., regarding unit owner meetings; s. 718.112(2)(e), F.S., relating to budget meetings; and s. 718.112(2)(f), F.S., relating to the annual budget.

*Present Situation:* In 1998 the following language was added to s. 718.112(2)(d)1., F.S.:

In order to be eligible for board membership a person must meet the requirements set forth in the declaration. A person who has been convicted of any felony by any court of record in the United States and who has not had his or her right to vote restored pursuant to law in the jurisdiction of his or her residence is not eligible for board

membership. The validity of an action by the board is not affected if it is later determined that a member of the board is ineligible for board membership due to having been convicted of a felony.

s. 3, ch. 98-322, Laws of Fla.

Despite the overall focus of the additional language on disqualification of felons, the first sentence has been construed to allow declarations to contain a requirement that a person must be a resident of the condominium in order to become a member of the board.

*Effect of Proposed Changes:* Strikes the first sentence which was added in 1998, which has been construed to allow residency requirements with regard to membership on the board, and deletes superfluous language.

*Present Situation:* Subparagraph 2 of s. 718.112(2)(d), F.S., requires delivery by mail of notice of the required annual meeting.

*Effect of Proposed Changes:* Allows hand delivery of the notice of the annual meeting in addition to mail delivery and specifies that notice by mail must be to the address last furnished to the association by the unit owner.

*Present Situation:* Subparagraph 3 of s. 718.112(2)(d), F.S., states: that no unit owner shall permit any other person to vote his or her ballot; that a unit owner who needs assistance in casting a ballot may obtain assistance; and that any unit owner “violating this provision can be fined by the association.

*Effect of Proposed Changes:* Corrects language by switching the order of the sentences to allow an association to fine a unit owner who wrongfully tries to cast another’s ballot and maintains the requirement that an association assist individuals with disabilities in casting ballots.

*Present Situation:* Paragraph (e) of s. 718.112(2)(e), F.S., addresses the annual budget meeting. If an adopted annual budget requires assessments against the unit owners in any fiscal *or* calendar year which exceed 115 percent of the assessments for the preceding year, the board, upon written application of 10 percent of the voting interests, must “*call*” a special meeting within 30 days of the request. Notice of the special budget meeting must be made not less than 10 days prior to the meeting. The notice must be in writing, but the statute does not regulate the form of delivery, nor is there a requirement that the association keep proof that the notice was sent or delivered. There is no time limit for the filing of a demand for a special budget meeting upon application of 10 percent of the voting interests, so theoretically this meeting could be called at any time.

At the special meeting, unit owners *must* consider and enact a budget. The adoption of a budget requires approval by at least a majority of the voting interests unless the bylaws require approval by a greater number. If a quorum is not obtained, or the substitute budget does not pass, the adopted budget goes into effect as scheduled.

*Effect of Proposed Changes:* Eliminates the reference to “fiscal or calendar year” in favor of “fiscal year,” limits the time for requesting a special budget meeting to 21 days after the adoption

of the annual budget, and requires the special meeting to be conducted within 60 days after the adoption of the budget. The notice of the special meeting must be given by mail or hand delivery, at least 15 days prior to the meeting, and proof of delivery by affidavit must be placed in the official records.

*Present Situation:* Paragraph (f) of s. 718.112(2)(f), F.S., lists the items that must be included in the annual budget and provides that the developer may waive reserves or reduce the funding of reserves for the first two years of the association's operation.

*Effect of Proposed Changes:* Adds additional budget requirements when a multicondominium association is involved. A multicondominium association must adopt a separate budget for each condominium and a separate budget of common expenses for the association. As to funding of the reserves in all condominium associations, the bill specifies that the two "fiscal" years within which a developer may waive or reduce reserves begins with the fiscal year in which the initial declaration is recorded in the county records, and provides that only after turnover of control of the association to the unit owners may the developer vote its voting interest to waive or reduce the funding of reserves.

The bill further clarifies that, in a multicondominium association, only those persons or entities that are subject to assessment may vote to waive or reduce funding of reserves, or to use reserves for purposes other than those intended.

**Section 7** amends s. 718.113, F.S., relating to material alterations or substantial additions to the condominium property.

*Present Situation:* If a declaration does not specify the procedure for approval of material alterations or substantial additions, 75 percent of the total voting interests of the association must approve the alteration or addition.

*Effect of Proposed Change:* As to multicondominium associations, requires an affirmative vote of 75 percent of the voting interests of each of the affected condominium associations to approve a material alteration or substantial addition to the common elements or to association real property operated by the multicondominium association and allows the declaration to specify a different procedure for approval of a material alteration or substantial addition to the common elements.

**Section 8** amends s. 718.115, F.S., relating to common expenses and common surplus.

*Present Situation:* Defines common expenses of a condominium association, places limits on how certain funds may be used, and specifies that collection of the funds necessary for common expenses shall be by assessment.

*Effect of Proposed Changes:* Adds provisions relating to multicondominium associations; provides that common expenses of a multicondominium association are those not directly attributable to the operation of a specific condominium, but may include categories of expenses related to property within a specific condominium if all members of the association have use rights therein or receive a tangible economic benefit; requires that such common expenses be identified in the declaration or bylaws; and provides that 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.

*Present Situation:* Section 718.115(1), F.S., provides that the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract is a common expense under specified circumstances. It also requires that the contract for these services provide that any hearing impaired or legally blind unit owner who does not occupy the unit with a non-hearing-impaired or sighted person may discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and as to such units, the owners shall not be required to pay any common expenses charge related to such service. If less than all members of an association share the expenses of cable television, the expense shall be shared equally by all participating unit owners.

*Effect of Proposed Changes:* The bill allows a condominium unit owner who receives supplemental security income or food stamps to discontinue master antenna television service without incurring disconnect fees, penalties, or service charges and to avoid common expense charges related to this service.

**Section 9** amends s. 718.116(9), F.S., making editorial and cross-reference changes, and adding provisions for multicondominium associations.

*Present Situation:* There are no specific statutory provisions regarding guarantee periods related to multicondominium associations.

*Effect of Proposed Changes:* Adds new paragraph (c) relating to multicondominium associations, to s. 718.116(9), F.S., providing that in a multicondominium situation, if a developer is excused from paying assessments under paragraph (a), then the developer shall pay the common expenses of a condominium affected by the guarantee, including funding of reserves, which exceed the regular periodic assessments at the guaranteed level against all other unit owners within that condominium; and the developer must pay according to the same formula as to the common expenses of the multicondominium association.

**Section 10** creates subsection (11) of s. 718.117, F.S., regarding termination of a condominium, clarifying that s. 718.117, F.S. (the general rules and procedures relating to the termination of a condominium), does not apply to the termination of a condominium incident to a merger of a condominium with another condominium.

**Section 11** amends s. 718.403, F.S., regarding phase condominiums.

*Present Situation:* When adding phases to a condominium, a developer is required to record in the public records an amendment to the declaration of condominium. After such recording, s. 718.104(2), F.S., requires the developer to file the recording information with the Division within 30 working days.

*Effect of Proposed Changes:* The filing requirement is changed from 30 working days to 120 calendar days.

**Section 12** creates s. 718.405, F.S., regarding multicondominiums. The section provides that 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;
- 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, and requiring, if applicable, specific disclosure language in the prospectus for each condominium; and
- The voting rights of the owners of each unit in the election of directors and other matters.

The section also provides a cause of action in the association or in any unit owner to enforce a declaration requirement that the developer convey lands or facilities to a multicondominium association, either by specific performance or by suit for money damages.

The section also adds a prohibition against the declaration of condominium of a multicondominium containing, at the time of recording, any provision that is inconsistent with law or with the declaration of another condominium being operated by the association.

It also allows the formation of a multicondominium association by the merger or consolidation of two or more condominium associations.

**Section 13** repeals s. 718.5019, F.S., which creates the Advisory Council on Condominiums.

**Section 14** amends s. 718.504, F.S., regarding the prospectus or offering circular, by creating a new subsection (15) for multicondominiums, requiring that if a condominium is or may become part of a multicondominium, the following information must be disclosed in the prospectus or offering circular:

- A statement in conspicuous type stating that the condominium is or may be part of a multicondominium;
- A summary of the provisions in the declaration and bylaws that establish and provide for the operation of the multicondominium development;
- The minimum and maximum number of condominiums and the minimum and maximum number of units in each of those condominiums that will or may be operated by the association, and the latest date by which the exact numbers will be finally determined;
- Whether any of the condominiums may include nonresidential units, and 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. 721.13, F.S., correcting cross-references to conform with amendments to s. 718.111(13), F.S., in the bill.

**Section 16** amends s. 617.3075, F.S., which prohibits specified clauses in homeowners' association documents, including the declaration of covenants, articles of incorporation, bylaws, or any other document of the association which binds members of the association. The section prohibits any clause by which:

- A developer has the unilateral ability and right to make changes to the homeowners' association documents after the transition of homeowners' association control in a community from the developer to the nondeveloper members has occurred.
- A homeowners' association is prohibited or restricted from filing a lawsuit against the developer, or the homeowners' association is otherwise effectively prohibited or restricted from bringing a lawsuit against the developer.
- After the transition of homeowners' association control in a community from the developer to the nondeveloper members has occurred, a developer is entitled to cast votes in an amount that exceeds one vote per residential lot.

Effective after July 1, 2000, the bill prohibits homeowners' association documents from precluding the display of one United States flag by property owners. The flag must be displayed in a respectful way and may be subject to reasonable standards. There is a similar provision in the condominium statutes at s. 718.113(4), F.S.

**Section 17** creates a 15-member Condominium Study Commission. The President of the Senate and the Speaker of the House of Representatives are each to appoint five members, at least two of whom are to be members of the Legislature. The Governor is to appoint five members who are not members of the Legislature. Persons appointed to the commission are to represent a cross-section of persons interested in condominium issues. In addition to the appointed members, the director of the Division of Florida Land Sales, Condominiums, and Mobile Homes is to serve as ex officio member. For administrative purposes, the commission is assigned to the Division of Florida Land Sales, Condominiums, and Mobile Homes

The commission is to conduct public hearings throughout the state and take testimony regarding issues relating to condominiums. It may receive recommendations for changes to the condominium law. The commission may consider, without limitation, the continued tension between unit owners and boards of directors, the election process for the board of directors, the effectiveness of the Division of Florida Land Sales, Condominiums, and Mobile Homes in responding to complaints from unit owners, the relationship of rights and responsibilities of unit owners and the board, the method of enforcement of condominium liens, and whether the condominium should be able to foreclose condominium liens against individual units.

Members of the commission may receive per diem and travel expenses pursuant to section 112.061, Florida Statutes, while on official business of the commission.

The commission is to report its recommendations and findings to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate

and the House of Representatives on or before February 1, 2001, for the 2001 Regular Session of the Legislature.

The bill appropriates \$100,000 from the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund to the Department of Business and Professional Regulation to carry out the provisions of this section.

The section expires June 30, 2001.

**Section 18** amends s. 718.501, F.S., deleting subsection (1)(j) regarding rulemaking authority. This subsection is made unnecessary by this bill because the rulemaking authority for financial reporting is in the amended s. 718.111(13), F.S., of this bill. The new wording of s. 718.111(13), F.S., is substantially similar to the wording deleted here, except that the amended s. 718.111(13), F.S., makes the rulemaking authority more specific.

**Section 19** provides an effective date of July 1, 2000.

#### **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:**

None.

##### **C. Government Sector Impact:**

The bill appropriates \$100,000 from the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund to the Department of Business and Professional Regulation to carry out the provisions of the condominium study commission section.

**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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