

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 694  
 SPONSOR: Judiciary and Regulated Industries Committees & Senator Geller  
 SUBJECT: Condominiums, Cooperatives, and Homeowners' Associations  
 DATE: February 27, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	RI	Favorable/CS
2.	Forgas	Johnson	JU	Favorable/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill:

- Provides for the transfer of use rights with respect to limited common elements.
- Provides for the inclusion of specified provisions in declarations or bylaws through amendment.
- Clarifies that a number of multicondominium statutes created in 2000 apply to multicondominiums created on or after July 1, 2000.
- Allows associations an additional 30 days to mail the final financial report to unit owners.
- Requires that arbitration petitions challenging the legality of the election of any director of a board of administrations be handled on an expedited basis.
- Deletes a requirement that pre-sale disclosures include a question and answer sheet.

The bill substantially amends the following sections of the Florida Statutes: 702.09, 718.104, 718.106, 718.110, 718.111, 718.112, 718.113, 718.115, 718.1255, 718.405, 718.503, and 718.504.

## II. Present Situation:

Chapter 718, F.S., the “Condominium Act,” governs condominium associations. A condominium is “that form of ownership of real property which is created pursuant to the provisions of this chapter, which is comprised 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.” The term “multicondominium” is defined in ch. 718, F.S., to mean “a real estate development containing two or more condominiums, all of which are operated by the same association.”

Further discussion regarding the present situation is addressed within the section-by-section analysis below.

### III. Effect of Proposed Changes:

**Section 1.** amends s. 702.09, F.S., to include condominium and cooperative association assessment liens within the definition of the term “mortgage” for purposes of including them among those liens that are reinstated if a foreclosure judgment is vacated. The bill also changes the definition of the term “foreclosure proceedings” to include those type of proceedings that occur in the county courts of this state.

**Section 2.** amends s. 718.104, F.S., regarding the creation of multicondominiums and the contents of declarations of condominium (declaration). Chapter 2000-302, L.O.F., created paragraph (h) of subsection (4) of section 718.104, F.S., relating to declarations. 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 1 and the denominator is the total number of units in the condominiums operated by the association.

The bill clarifies that the provisions of s. 718.104(4)(h), F.S., apply to multicondominium declarations recorded on or after July 1, 2000.

The bill amends subsection (5) of s. 718.104, F.S., to provide that covenants and restrictions may be included in the declaration through amendment.

**Section 3.** amends 718.106, F.S., regarding transfer of limited common elements.

Currently, s. 718.106(2)(b), F.S., provides that the exclusive right to use common elements as provided in the declaration, “including the right to transfer such right to other units or unit owners to the extent authorized by the declaration as originally recorded, or amendments to the declaration adopted under s. 718.110(2),” is an appurtenance passing with the unit. 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. Case law applies this prohibition to the conveyance of a limited common element that has been assigned to a particular unit. *See, Brown v. Rice*, 716 So.2d 807 (Fla. 5th DCA 1998). Parking spaces are the most common example of a limited common element.

The bill specifies that amendments to declarations of condominiums providing for the transfer of use rights with respect to limited common elements are not amendments that materially modify unit appurtenances as described in s. 718.110(4), F.S. (That section prohibits such amendments to the declaration.) The transfer must be effectuated according to procedures set forth in the original declaration or as amended. The bill states that this is intended to clarify existing law and to apply to existing associations.

**Section 4.** amends s. 718.110(4), F.S., which contains general prohibitions against specified types of amendments to declarations. In general, unless otherwise provided in the declaration as originally recorded, no amendment may 1) change the configuration or size of any unit in any material fashion, 2) materially alter or modify the appurtenances to the unit, or 3) change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium. A declaration recorded after April 1, 1992, may not require the approval of less than a majority of total voting interests of the condominium for amendments under this subsection, unless otherwise required by a governmental entity.

The bill amends this section to specifically provide that amendments providing for the transfer rights discussed above do not constitute such a prohibited amendment.

**Section 5.** amends s. 718.111(13), F.S., which requires that within 90 days after the end of the fiscal year, the association must prepare or cause to be prepared by a third party the annual financial report.

The bill requires that the association have contracted with a third party within 90 days, and have mailed the final financial report to unit owners no later than 120 days after the end of the fiscal year.

**Section 6.** amends s. 718.112, F.S., relating to bylaws to provide that optional provisions may be included in the bylaws by amendment.

**Section 7.** amends s. 718.113, F.S., relating to material alterations or substantial additions to the condominium property. Prior to 1992, material alterations or substantial additions to common elements or association real property were prohibited unless provided for in the declaration. In 1992, this section was amended to provide that 75 percent of the total voting interests of the association could approve such alterations if not contained in the declaration. s. 3, Ch. 92-49, L.O.F. In 2000, this was made applicable to multicondominium associations. s. 53, Ch. 2000-302, L.O.F.

The bill allows amendment of declarations to provide procedures for amendments to authorize approving material alterations to common elements. It states that the changes are intended to clarify existing law and apply to existing associations.

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

Currently, s. 718.115, F.S., 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 is by assessment. Sections 718.115(1)(b) and (1)(c), F.S., provide that common expenses of a multicondominium association are those not directly attributable to the operation of a specific condominium. The common expenses 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, and requires that such common expenses be identified in the declaration or bylaws.

The bill amends ss. 718.115 (1)(b) and (c), F.S., to specify that these paragraphs are intended to “clarify existing law” and apply retroactively to associations in existence at the time of enactment of the changes to these provisions.

**Section 9.** amends s. 718.1255, F.S., to require that arbitration petitions challenging the legality of the election of any director of a board of administration be handled on an expedited basis.

**Section 10.** amends s. 718.405, F.S., which was created by section 59 of chapter 2000-302, L.O.F., and which provides for creation and operation of multicondominiums, to clarify that the section applies to multicondominiums created on or after July 1, 2000.

**Section 11.** amends s. 718.503(2), F.S., on nondeveloper disclosure prior to sale to delete a requirement that pre-sale disclosures include a question and answer sheet.

**Section 12.** amends s. 718.504(15), F.S., to provide that prospectus or offering circular requirements that relate to multicondominiums apply only if the condominium was created on or after July 1, 2000.

**Section 13.** Provides that this bill take effect on July 1, 2002.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other:

There is some concern that the bill violates the provisions of section 6 of article III of the Florida Constitution which provides that “[E]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” This bill is entitled “An act relating to condominiums and cooperatives.” However, the stated entities each have their own chapter in the Florida Statutes and are not grouped together in one single chapter. Additionally, with the exception of the first section of the bill, the entire bill is devoted only to condominiums. The first section of the bill amends ch. 702, F.S., which pertains to foreclosures of mortgages, and addresses condominiums and cooperatives. The single-subject requirement requires a logical or natural connection between the various portions of a legislative enactment and this is satisfied if there is a reasonable explanation as to why the legislature joined multiple subjects within the same legislative act. *See Grant v. State*, 770 So.2d 655, 657 (Fla. 2000). Arguably, there is a logical or natural connection between liens for condominium assessments and most of the

issues in this bill which relate to the governance of condominium associations. However, the connection between liens to secure payment of assessments for cooperatives may not be as natural or logical as the connection between liens to secure payments of assessments to condominiums.

Additionally, as far as title and subject matters are concerned, the bill's provision changing the definition of the term "foreclosure proceedings" is arguably not logically or naturally connected to the remaining portions of the bill. The bill changes the definition of the term "foreclosure proceedings" in s. 702.09, F.S., to include those types of proceedings that occur in the county courts of this state. Currently, s. 702.09, F.S., defines "foreclosure proceedings", for the purposes of ss. 702.07 and 702.08, F.S., as only those types of proceedings occurring in circuit court. Sections 702.07 and 702.08, F.S., pertain to the setting aside of foreclosure decrees in circuit court, not county court. Accordingly, the bill's change in the definition of the term "foreclosure proceedings" is related to the subject of the county court's jurisdiction as opposed to the governance of condominiums.

The declaration of a condominium has been referred to as a condominium's constitution. *See Woodside Village Condominium Association, Inc. v. Jahren and McClernan*, No. SC00-1030 (Fla. January 3, 2002), slip op. at 8. The declaration strictly governs the relationships between condominium owners and the condominium association. *Woodside*, Slip Op. at 8. Section 718.104(5), F.S., provides that a declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units. Section 718.110, F.S., provides broad authority to amend a declaration. In *Woodside*, the Florida Supreme Court held that a declaration of condominium may be amended to impose lease restrictions on condominium units. The court rejected the concept of "vested rights", holding that a properly enacted amendment to a declaration of condominium binds all condominium units, including units owned by an owner who purchased a unit prior to the amendment and objected to the amendment. *See Woodside*, Slip Op. at 11-12, 17-18, 28. Accordingly, the bill's provisions should not run afoul of constitutional due process principles.

## **V. Economic Impact and Fiscal Note:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

Indeterminate.

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

None.

## **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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