

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Regulated Industries Committee

BILL: CS/SB 2816

INTRODUCER: Regulated Industries Committee and Senator Villalobos

SUBJECT: Community Associations

DATE: April 16, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	Fav/CS
2.			CA	
3.			JU	
4.			GA	
5.				
6.				

I. Summary:

The bill makes numerous changes to regulations for condominium associations and homeowner associations. The changes to the condominium law include:

- For condominiums created after April 1, 2007, the ownership share of the common elements, and proportion of sharing expenses must be based solely on the relative size of the unit in relation to the total size of each other unit in the condominium;
- Except in the case of an emergency, condominium associations must give the unit owner 24 hours advance written notice of intent to access the unit;
- Numerous changes to the bylaw requirements;
- Prohibiting rules that fail to accommodate reasonable religious practices or the attachment of religiously mandated objects to the front-door area of a condominium unit;
- Prohibiting strategic lawsuits against public participation, otherwise known as SLAPP suits, against unit owners;
- Requiring the division to promptly refer an arbitration case to mediation and removing the ability of the parties in mediation to seek to recover any costs and attorney’s fees as part of the costs and attorney’s fees that may be recovered by the prevailing party in any subsequent litigation;
- Providing that unit owners or renters of a condominium have the right to own a companion animal if the animal is deemed helpful to the person’s physical or psychological well-being as attested by at least two qualified health care professionals; and
- Empowering the office of the Condominium Ombudsman to issue orders and engage in enforcement type activities.

The bill makes changes to the laws regulating homeowners associations that include:

- The association may establish and fund reserve accounts for capital expenditures and items of deferred maintenance, and provide for calculating reserves, maintaining reserves, and waiving reserves if the association determines that reserves will be included in the budget;
- Lowering the percentage of sell-out of the association from the developer to the homeowners that triggers turnover from 90 percent to 75 percent; and
- Adding to the list of prohibited clauses in the governing documents language that would result in the association's functioning in conflict with federal, state and local laws, restricting homeowners from installing hurricane shutters or other hurricane protection, or from mounting temporary or permanent shutters or other hurricane protection during any time that a hurricane warning has been declared, evacuation ordered, or for seven days after the conclusion of the watch or evacuation, or for 14 days in the case of a category four storm or greater.

This bill substantially amends the following sections of the Florida Statutes: 718.104, 718.110, 718.111, 718.112, 718.113, 718.1255, 718.302, 718.3025, 718.3026, 718.303, 718.404, 718.501, 718.5011, 718.5012, 718.504, 720.303, 720.307, 720.3075.

The bill creates sections 718.1224 and 718.1257 of the Florida Statutes.

II. Present Situation:

Chapter 718, Florida Statutes, the Condominium Act (act) is a comprehensive statute that regulates residential condominium living throughout the state. The act contains myriad regulations dealing with condominium elections, finances, communication with unit owners, repair and maintenance, and meetings of the condominium's governing board which is elected from among the condominium's unit owners. Currently, there are 3 million unit owners spread among 20,000 condominium associations across the state with approximately 70 percent of these associations located in Palm Beach, Broward, Miami-Dade, and Monroe counties.

The Department of Business and Professional Regulation's Florida Division of Land Sales, Condominiums and Mobile Homes (division) is charged with carrying out this regulatory responsibility under the provisions of the act. The division's mission is to provide consumer protection to condominium residents through education, developer disclosure, enforcement, and alternative dispute resolution.

Chapter 720, F.S., generally describes how homeowner associations (HOA's) organize and operate themselves. Although the division provides alternative dispute resolution services for residents of HOA's, no state agency is responsible for regulating HOA's. Chapter 720, F.S., specifically provides that it is the legislature's intent that HOA's not be regulated.

Section 718.50151, F.S., establishes the Condominium Advisory Council and generally authorizes the council to gather public input regarding condominium living and advise the

division. Since its inception the council has conducted numerous public meetings and received the testimony of hundreds of condominium unit owners.

Sections 718.5011 and 718.5012, F.S., establish the office of the Condominium Ombudsman who is appointed by the Governor and serves at the pleasure of the Governor. The principle role of the Ombudsman is to act as a neutral liaison between the division and unit owners in resolving condominium unit owner issues and to provide election monitoring services to condominium associations. Under the current law, the Ombudsman does not “enforce” any provisions of the act, but can recommend that the division take enforcement action with respect to condominium problems encountered or reported to the Ombudsman’s office.

At the present time, there is no advisory council for HOA’s comparable to the Condominium Advisory Council.

Chapter 190, F. S., provides for the creation and operation of Community Development Districts (CDD’s). However, by law a CDD is a special purpose unit of local government that is not regulated by the Department of Business and Professional Regulation.

III. Effect of Proposed Changes:

Creation of condominiums

The bill amends s. 718.105(4)(c), F.S., to provide that, for condominiums created after April 1, 2007, the ownership share of the common elements, and proportion of sharing expenses must be based solely on the relative size of the unit in relation to the total size of each other unit in the condominium. Under the current law, the proportionate share of condominium ownership must either be equal fractional shares or based on the relative size of the units.

Amendment to declaration

It amends s. 718.110(1), F.S., to require that notice of proposed amendments to the declaration of condominium be provided to unit owners by certified mail.

The condominium association

- Section 718.111(5), F.S., is amended to provide that, except in the case of an emergency, condominium associations must give the unit owner 24 hours advance written notice of intent to access the unit.
- Section 718.111(12)(b), F.S., is amended to require that association records be made available within 30 miles driving distance of the condominium property for the purpose of allowing records access to unit owners. Social security numbers, driver’s license numbers, credit card numbers, and other personal identifying information of unit owners, occupants or tenants would not be available for inspection by unit owners or their appointed representatives. The reporting requirements cannot be waived for more than two years.

- Section 718.111(13), F.S., is amended to delete a requirement that a unit owner must make a written request to receive a copy of the financial statement and instead provides that condominium associations must deliver a copy of the financial statements to each unit owner.
- Section 718.111(15), F.S., is created to provide for reconstruction in the event of a casualty. Where condominium property is damaged the board must obtain reliable and detailed estimates of the cost to repair the damaged property to substantially the same condition existing immediately prior to the casualty and substantially in accordance with the original plans and specifications as soon as possible and not later than 60 days after the casualty. If the damage exceeds 50 percent of the property's value, the condominium may be terminated unless, within 90 days after the casualty, 75 percent of the unit owners agree to reconstruction. The board must engage the services of a registered architect and knowledgeable construction specialists to prepare any necessary plans, receive and approve bids for reconstruction, arrange for disbursement of construction funds, approve the work and all other matters pertaining to the repair and reconstruction.

At any time during reconstruction, or if the insurance proceeds are insufficient to pay the estimated costs, assessments must be made against all unit owners according to their ownership interests set forth in the declaration. Assessments must be made against unit owners for damage to their units according to the cost of reconstruction or repair of their respective units and the assessments must be levied and collected as all other assessments are provided in the Condominium Act. Thus, the cost to repair damage to a unit may be assessed solely against that unit and may be foreclosed as with an assessment foreclosure.

Bylaws

Section 718.112, F.S., is amended by the bill as follows:

- Allows condominium association board members to determine the number of board members if the bylaws are silent, and to require five members to be unit owners;
- Associations would be required to respond to unit owner inquiries using certified mail and provisions in current law that authorize associations to adopt reasonable rules regarding the frequency and manner of responding to unit owner inquiries are deleted;
- Board action could not be taken on a resolution adopted without an open meeting of the board and the board must address agenda items proposed by a petition of 20 percent of the unit owners, a unit owner's faxed signature would be sufficient for any matter that requires the signature of a unit owner, correspondence from the board to unit owners must be accomplished by the same delivery method used by the owner, items could be taken up at a board meeting on an emergency basis without being originally included on the agenda pursuant to a petition of 20 percent of the unit owners;
- If a board meeting is held to consider regular or special assessments, the notice of the meeting must include a description of the nature, cost, and breakdown of any such assessments;

- Deletes provisions authorizing associations to establish alternative election procedures in their bylaws; the only prohibition against eligibility for board membership is conviction of a felony by any court of record in the United States, without the restoration of civil rights;
- The association, or its representative would continue to carry out the duties related to notice of election; however, an association could no longer use both sides of the paper when printing candidate information sheets. All ballot envelopes would have to be secured in a sealed ballot box immediately upon receipt and could not be opened in advance of the election meeting;
- Owners would have the right to have items placed on the agenda of the annual meeting and voted upon if a written request is made by 20 percent or more of all voting interests at least 90 days before the date of the annual meeting;
- The association's annual budget would have to both include estimated revenues and expenses, the budget from the prior year would remain in effect until the association has adopted the new budget for the current year. In addition, the budget would have to include reserves for structural repairs;
- Associations would have to include a disclaimer on all ballots involving waiver or reallocation of reserves stating that waiver or reallocation of existing reserves may result in unanticipated special assessments, reserve waiver votes would have to be taken at the annual meeting; the division would be required to promulgate a ballot form for waiving or reducing reserves. The association, after turnover from the developer's control could use reserves for non-scheduled purposes in the case of a catastrophic event;
- Except in the case of an emergency, or unless otherwise specified in the bylaws, the board could not obtain a loan or line of credit in an amount that exceeds 10 percent of the association's current year budget. After the declaration of condominium is recorded and until such time as the association has been created, all common expenses shall be paid by the developer. Assessments must be levied based on the adopted budget or authorized special assessment and accelerated assessments are due and payable after a claim of lien has been filed.
- Effective January 1, 2008, the current arbitration program for recall disputes is removed from the division and replaced with a program to be operated by the condominium ombudsman. A recall of the board would be effective immediately, and the board may submit rebuttal arguments to the Ombudsman within five business days of service of the agreement. The Ombudsman must certify or not certify the recall within 10 business days after receipt of the written agreement. If the Ombudsman does not certify the agreement, the Ombudsman shall notify the member or members of the board and the board president of the reasons for not doing so, and the unit owners will have an additional five business days to correct the deficiency. The board members would then have an additional five business days to submit rebuttal argument and supporting evidence.

- The requirement that the bylaws include a provision for mandatory nonbinding arbitration as provided in s. 718.1255, F.S, is repealed.

Maintenance; limitation upon improvement; display of flag; display of religious decorations; hurricane shutters

The bill amends s. 718.113(1), F.S., to provide that maintenance of limited common elements must either be performed by the unit owners entitled to exclusive use of the limited common elements or assessed against those unit owners if the association performs the maintenance.

It requires the board to restate hurricane shutter specifications at each annual meeting, and specifies that the board may, subject to unit owner approval, install, maintain, repair, or replace hurricane shutters or other hurricane protection that complies with the applicable building code.

The board would be required to have the condominium buildings inspected every five years by a professional engineer or architect for the purpose of determining whether the building is structurally and electrically safe. Detailed reporting requirements would be required of the engineer or architect and would become an official record of the association.

Section 718.113(7), F.S., is created to prohibit the board from adopting any rule impairing any rights guaranteed by the First Amendment to the Constitution of the United States, or s. 3 of Article I of the Florida Constitution, including, but not limited to, the free exercise of religion. The bill expressly prohibits rules that fail to accommodate reasonable religious practices or the attachment of religiously mandated objects to the front-door area of a condominium unit.

Prohibition against SLAPP suits

Section 718.1224, F.S., is created prohibiting strategic lawsuits against public participation, otherwise known as SLAPP suits, against unit owners. Governmental entities, business organizations, and individuals in Florida would be prohibited from filing or causing to be filed through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against a condominium unit owner without merit and solely because such condominium unit owner has exercised the right to petition for redress of grievances on matters relating to the condominium association. A condominium unit owner sued in violation of this section would have a right to an expeditious resolution. The court may award actual damages and as much as treble damages to a prevailing unit owner as well as attorney's fees and costs. A condominium association cannot expend association funds in prosecuting a SLAPP suit against a unit owner.

Alternative dispute resolution

Section 718.1255(4)(e), F. S., is amended to allow the division to promptly refer an arbitration case to mediation and removes the ability of the parties in mediation to seek to recover any costs and attorney's fees as part of the costs and attorney's fees that may be recovered by the prevailing party in any subsequent litigation.

Emotional-support animals

The bill creates s. 718.1257, F.S. to provide that unit owners or renters of a condominium have the right to own a companion animal if the animal is deemed helpful to the person's physical or psychological well-being as attested by at least two qualified health care professionals. Any law or rule contrary to this provision shall be deemed unconscionable and of no legal effect. The unit owner is entitled to attorneys fees in any court action that requires the unit owner to enforce this provision.

Agreements entered into by the association

Section 718.302(1), F.S., is amended to include services and products in the list of grants and reservations made by an association prior to turnover that must be fair and reasonable and which may be canceled by unit owners other than the developer.

Agreements for operation, maintenance, or management of condominiums

Section 718.3025(1), F.S., is amended to require that in order for a written contract providing for the operation, maintenance or management of the association or condominium property to be enforceable, it must contain provisions that all obligations be complete within one year and must prohibit automatic renewal of the contract.

Contracts for products and services

Section 718.3026, F.S., is amended to provide that a contract with a service provider shall not be for a term in excess of three years and shall not contain an automatic renewal clause, and a contract for construction or repair of the property that exceeds 10 percent of the total annual budget must have the approval of an attorney hired by the association.

Section 718.3026(4), F.S. is created to provide that anyone subject to an action under this section must be notified by certified mail, return receipt requested and has 30 days to respond in writing, except in the case of imminent danger to person or property. If no response is provided and the violation continues or is repeated, the association may proceed under s. 718.3026(1) and (2), F.S., without further notice except as provided in s 718.3026(3), F.S.

Obligations of owners

Section 718.303, F.S., is amended to clarify that the committee presiding over the hearing required before a fine can be imposed on a unit owner must be made up of unit owners who are not members of the board, and provides that anyone subject to an action under this section must be notified of the violation by certified mail, return receipt requested. Except in the case of imminent danger to person or property, the person noticed has 30 days in which to respond in writing.

Powers and duties of Division of Florida Land Sales, Condominiums, Homeowner's Associations, and Mobile Homes

Section 718.501(1)(e), F.S., is amended to provide that the division must prepare and disseminate a prospectus and other information as provided in this section.

Section 718.501(1)(j), F.S., is amended to provide that the division must work in conjunction with the recommendations of the Ombudsman when providing training and education programs for board members and unit owners.

Upon a finding that any association has committed a violation within the jurisdiction of the division, the association must mail and post a notice to all owners setting forth the facts and findings and the corrective action required. The association must also participate in an educational training program directly related to the violation, taught by a division-approved provider, and completed within 90 days from the notification of the finding to the board members. Failure of the association to comply with these provisions will subject the association to penalties in the amount of \$500 for each week that the notice is not provided to the unit owners or the educational training is not completed.

Ombudsman; appointment; administration

Section 718.5011, F.S., is amended to provide that the Ombudsman shall exercise policymaking and other functions authorized in the Condominium Act independently of the Department of Business and Professional Regulation and without approval or control of the department. The department must render administrative support to the office in matters pertaining to budget, personnel, office space, equipment, and supplies. All revenues collected for the office by the department shall be deposited in a separate fund or account from which the department may not use or divert the revenues. The bill also repeals the current prohibition on the Ombudsman's staff actively engaging in any other business or profession, serving as the representative of any political party, serving as an executive, officer, or employee of a political party, receiving remuneration for activities on behalf of any candidate for public office, or engaging in soliciting votes or other activities on behalf of a candidate for public office, or becoming a candidate for election to public office unless first resigning from the office or employment.

Ombudsman; powers and duties

Section 718.5012, F. S., is amended to remove the requirement that the Ombudsman develop policies and procedures; require the division to process the Ombudsman's recommendations and petitions in an expedited manner and to require the department to defer to the Ombudsman's findings.

The bill provides the Ombudsman with authority to administer oaths, subpoena witnesses, take evidence and require production of any matter that is relevant to an inquiry, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence, and may apply to the circuit court for an order compelling compliance. The Condominium Ombudsman

would be authorized to investigate any matter that relates to the fulfillment of the duties of the Ombudsman. The Ombudsman would have authority to order meetings between unit owners, boards, board members, community association managers and other affected parties.

The Ombudsman would have authority to make recommendations to the division to pursue enforcement action in circuit court on behalf of a class of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution against any developer, association, officer, or board member or its assignees or agents when there is reasonable cause to believe misconduct has occurred. The division must process the Ombudsman's recommendations and petitions in an expedited manner and defer to the Ombudsman's findings.

Section 718.5012(3), F.S. is created to provide that any unit owner or association acting in good faith on the advice of the Ombudsman would be immune from any penalties or actions.

Prospectus or offering circular

Section 718.504(21), F.S., is amended to require a developer to prepare the condominium budget in good faith, include estimated revenues in the budget, and to delete the provision of the law that allows the budget to be stated in terms of more than one annual period, or distinguish between the periods prior to and after turnover of developer control.

Association powers and duties

Several amendments to s. 720.303, F.S., are provided as follows:

- The association may establish and fund reserve accounts for capital expenditures and items of deferred maintenance, and provide for calculating reserves, maintaining reserves, and waiving reserves if the association determines that reserves will be included in the budget;
- Specified disclosures must be included in the annual financial report should the association decide not to include reserves in the budget when such expenditures are applicable; and
- Extends the deadline for homeowners' associations completing their annual financial reports, to 90 days from the end of the reporting period. The reports must be provided to the homeowners within 21 days after completion of the statements, but not less than 120 days from the end of the reporting period and shall be prepared in accordance with generally accepted accounting principles as adopted by the Board of Accountancy, and prohibit the commingling of association funds with those of a corporation for profit created by the developer.

Transition of association

Section 720.307, F.S., relating to turnover from developer control to the homeowners' association is amended. The bill lowers the percentage of sell-out that triggers turnover from 90 percent to 75 percent. The developer is required to convey title to common areas to the

association immediately after its incorporation and any additional common areas acquired by the developer must be conveyed immediately to the association.

For associations incorporated after December 31, 2007, the developer is required to turnover to the board the financial records and source documents from the incorporation through the date of turnover to the board.

Prohibited clauses in association documents

Section 720.3075, F.S., is amended to add to the list of prohibited clauses in the governing documents language that would result in the association's functioning in conflict with federal, state and local laws, restricting homeowners from installing hurricane shutters or other hurricane protection, or from mounting temporary or permanent shutters or other hurricane protection during any time that a hurricane warning has been declared, evacuation ordered, or for seven days after the conclusion of the watch or evacuation, or for 14 days in the case of a category 4 storm or greater.

If a local government restricts homeowners' employing temporary or permanent shutters the local government may also authorize associations to adopt and enforce equal or lesser restrictions. The association may adopt restrictions governing the color or form of shutters or other permanent exterior window coverings. Associations may not restrict the time or duration for shutters or other hurricane protection to be open or closed during any period.

It provides an effective date of July 1, 2007.

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:

The bill would require each homeowner association member to pay a \$4 fee effective July 1, 2008.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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