

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 714

INTRODUCER: Senator Jones

SUBJECT: Condominium Insurance

DATE: March 7, 2009 REVISED: 03/10/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Burgess	BI	Fav/1 amendment
2.			RI	
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input checked="" type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Senate Bill 714 revises and clarifies the property insurance requirements of condominium associations and condominium unit owners under ch. 718, F.S. (Condominium Act). The legislation corrects inconsistencies with terms used under the Florida Insurance Code and repeals certain requirements placed on condominium unit owners which include the mandate to maintain property insurance coverage and that the condominium association must be an additional named insured and loss payee on policies issued to unit owners. The legislation further repeals the provision that a condominium association may force place property insurance coverage when the unit owner does not provide proof of insurance. The bill provides the following:

- Creates a provision under the Insurance Code to require that for residential condominium unit owner policies, issued or renewed on or after October 1, 2009, coverage must include loss assessment coverage of \$2,000, after any applicable deductible due under the owner's policy. Every property insurance policy issued or renewed on or after January 1, 2010, to a unit owner must contain a provision stating that the coverage is excess coverage over the amount recoverable under any other policy covering the same property.
- Deletes the provision that a unit owner's hazard insurance policy, issued or renewed on or after January 1, 2009, include special assessment coverage of \$2,000 per occurrence and the

provision prohibiting the policy from providing rights of subrogation against the owner's condominium association.

- Deletes the requirement that a unit owner's hazard insurance policy provide that the policy coverage is "excess coverage" over the amount recoverable under any other policy covering the same property.
- Clarifies what property is the responsibility of the unit owner and covered by the owner's property insurance policy.
- Deletes the requirement that all improvements or additions to the condominium property that benefit fewer than all unit owners be insured by the unit owner or owners having the use thereof, or may be insured by the association at the cost and expense of the unit owners having such use.
- Removes the provision that the association require owners to provide evidence of hazard and liability insurance upon written request, but not more than once per year and should the owner fail to provide such insurance (within 30 days of delivery of such request), the association may purchase a policy on the owner's behalf and the owner is responsible for the cost of the policy and for any reconstruction costs incurred by the association. Such costs may be collected as assessments by the association.
- Deletes the requirement that the association be an additional named insured and loss payee on all casualty insurance policies issued to unit owners in the condominium operated by the association.
- Clarifies that adequate "property" insurance, as opposed to "hazard" or "casualty" insurance, be provided by the condominium association and condominium unit owner.
- Provides that adequate property insurance be based upon the replacement cost of the insured property which must be determined at least once every 36 months.
- Deletes the requirement that notices of association board meetings contain specified provisions relating to deductibles and that such meetings may be held in conjunction with budget meetings.

This bill substantially amends the following section of the Florida Statutes: 718.111.

The bill creates the following section of the Florida Statutes: 627.714.

II. Present Situation:

Condominium Insurance

A condominium is a "form of ownership of real property created pursuant to this chapter, which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements." Condominiums are regulated by the Division of Florida Land Sales, Condominiums, and Mobile Homes ("division") of the Department of Business and Professional Regulation ("DBPR" or "department"), in accordance with ch. 718, F.S.

In 2003, the Legislature established the property and casualty insuring responsibilities of the condominium association and those of the individual condominium unit owner under s. 719.111(11), F.S.¹ The legislation provided that on or after January 1, 2004, every hazard insurance policy provided to the association include coverage for specified portions of

¹ Chapter 2003-14, L.O.F.

condominium property located inside and outside of the units as well as condominium property required to be covered under the declaration of condominium.² The law provided that the real or personal property located inside the boundaries of the owner's unit, which is excluded from coverage to be provided by the association, shall be insured by the individual unit owner.³ In the 2007 Special Session, legislation was enacted clarifying that the above provisions apply to "residential" condominiums.⁴ The legislation further provided that windstorm insurance coverage for a group of three communities operating under ch. 718, F.S., (Condominium Act) may be obtained if the coverage is sufficient to cover an amount equal to the probable maximum loss for communities for a 250-year windstorm event.

Comprehensive condominium legislation was enacted in 2008 to revise and clarify the insurance requirements for condominium associations and unit owners.⁵ It specified that adequate hazard insurance⁶ required by the association be based on the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The full insurable value must be determined at least every 36 months.⁷ The legislation permitted the association to determine the insurance deductibles on the basis of available funds and predetermined assessment authority at a meeting of the board.⁸ The meeting notice must state the proposed deductible and the funds and assessment authority relied upon by the board and estimate any potential assessment amount against each unit, if any. Such meeting may be held in conjunction with a meeting to consider the proposed budget.

The legislation specified the provisions that must be contained in every hazard insurance policy issued or renewed on or after January 1, 2009, to an individual unit owner.⁹ Such policy must contain a provision providing that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property. Also, such policies must include a special assessment coverage¹⁰ of not less than \$2,000 per occurrence. However,

² See, Florida Office of Insurance Regulation (OIR), *Condominium Insurance Report*. November 19, 2004. Condominium associations purchase commercial residential property insurance policies in both the admitted and non-admitted markets in order to provide required insurance. The admitted market includes those insurers that are authorized to transact insurance in Florida and file forms and rates with the Office of Insurance Regulation pursuant to ss. 627.410 and 627.062, F.S. The non-admitted market includes those insurers that are eligible to provide coverage for risks that cannot be insured in the admitted market. These policies are written pursuant to ss. 626.913-626.937, F.S. (Surplus Lines law).

³ Condominium unit owners generally purchase personal residential property insurance policies in both the admitted and non-admitted markets in order to provide required coverage.

⁴ Chapter 2007-1, L.O.F.

⁵ Chapter 2008-240, L.O.F.

⁶ Hazard insurance is not a usual or customary term under the Insurance Code. The term "property" insurance is utilized under the Code and refers to real or personal property.

⁷ Section 718.111(11)(a), F.S.

⁸ Section 718.111(11)(c), F.S.

⁹ Section 718.111(11)(g), F.S.

¹⁰ The Insurance Code does not define the term "special assessment coverage." In a letter to the OIR Commissioner, Senator Jones (a sponsor of the 2008 legislation) stated that the use of the term "special assessment" had caused some confusion and that it was the intent of the legislature that this term only apply to assessments for loss, as opposed to assessments for routine maintenance and upkeep, such as painting and repaving. It was not the intent of the sponsor to create a new liability for assessments that were not triggered by loss. See, Letter from Senator Jones to Commissioner McCarty (September 8, 2008) in the Banking and Insurance Committee.

Under the condominium law (s. 718.103(1), F.S.), an "assessment" is defined as the "share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner." Section 718.103(24), F.S.,

such a policy issued to an individual unit owner does not provide rights of subrogation against the condominium association operating the condominium in which such individual's unit is located. The legislation required that improvements or additions which do not benefit all of the unit owners must be insured by the unit owner or owners who use the improvements or additions. Alternatively, the association may insure the improvements or additions at the expense of the unit owners who use them.

The legislation mandated that unit owners provide evidence of their hazard and liability insurance policy to the association upon request, but not more than once per year. If the unit owner fails to provide their certificate of insurance within 30 days of the delivery of the written request by the association, the association may purchase a policy on behalf of the unit owner. The unit owner is responsible for the cost of the policy and for any reconstruction costs incurred by the association. These costs may be collected as assessments under s. 718.116, F.S. The legislation further provided that the association must be an additional named insured and loss payee on all casualty insurance policies issued to unit owners in the condominium operated by the association.

Loss Assessment Coverage and Deductibles

In general, all condominium unit owner property insurance policies provide for loss assessment coverage.¹¹ Effective January 1, 2009, such policies were to include an assessment coverage of not less than \$2,000 per occurrence pursuant to legislation passed in 2008.¹² Most policies provide that unit owners may increase this limit up to \$50,000. Under the typical loss assessment provision, the insurer will pay up to the policy limit for the insured's share of loss assessment charged during the policy period against the insured by the condominium association when the assessment is made as a result of direct loss to the property owned by all members collectively and caused by the insured peril.

The policy limit is the most the insurer will pay with respect to any one loss, regardless of the number of assessments. The triggered event for the loss assessment coverage is an assessment by the association taking place during the policy period and the date of the occurrence that generated the assessment is not a factor. If the assessment is made during the policy period, even if the actual occurrence causing the property damage took place prior to the effective date of the policy, then the triggering criteria have been met. In order for the assessment to be covered under the policy, the peril causing the loss must be a covered peril under the unit owner's policy.

Most property insurance policies have an all-other-peril (AOP) deductible of \$500 which applies to loss assessment claims.¹³ However, with the passage of the condominium legislation in 2008,¹⁴ the OIR has taken the position that a deductible does not apply to loss assessment

defines a "special assessment" as "any assessment levied against a unit owner other than the assessment required by a budget adopted annually."

¹¹ The Insurance Services Office (ISO) writes and provides to insurers standard condominium unit owner property insurance policy forms (HO-6 policies) which contain loss assessment coverage provisions. While not all insurers use ISO forms, the coverage provisions provided by those insurers often closely track the ISO forms.

¹² Chapter 2008-240, L.O.F. The term "special" assessment coverage was referenced in the 2008 legislation. This provision is deleted in SB 714 and the term "loss" assessment coverage is used. See footnote 9.

¹³ A deductible is the amount an insured must pay before the insurance coverage applies to a covered loss.

¹⁴ Chapter 2008-240, L.O.F.

coverage under a unit owner's policy. Representatives with the agency state that the ISO forms approved prior to the 2008 legislation do apply a policy deductible for loss assessment claims.

III. Effect of Proposed Changes:

Section 1. Amends s. 718.111(11), F.S. pertaining to condominium insurance. The bill changes terminology by deleting the terms "hazard" and "casualty" in referring to insurance in multiple paragraphs in this subsection and replaces those terms with the term "property." Property insurance is insurance on real or personal property and is the usual and customary term used in the Insurance Code.¹⁵ Casualty insurance¹⁶ refers to liability insurance and is not the appropriate term to be used in this context and hazard insurance is not a usual or customary term under the Code. The bill clarifies that adequate property insurance shall not be based upon the "full insurable value" of the property, but must be based on the "replacement cost" of the property to be insured, which must be determined at least once every 36 months.

In s. 718.111(11)(c)3, F.S., the bill deletes the provision that requires the board meeting notice to state the proposed deductible and the available funds and the assessment authority relied upon by the board, as well as the estimate of the potential assessment amount against each unit, if any. The bill also removes the provision which permitted the board meetings to be held in conjunction with a meeting to consider the proposed budget or budget amendment.

In s. 718.111(11)(f)3, F.S., the bill clarifies that the property that is excluded from the association's insurance coverage (i.e., the personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the forgoing) is the responsibility of the unit owner and the unit owner's insurance.

The bill amends s. 718.111(11)(g), F.S., to provide that the unit owner's insurance policy issued after October 1, 2009, must conform to the requirements of s. 627.714, F.S. (Section 2, below). The bill deletes the following provisions from s. 718.111(11)(g), F.S.:

- A unit owner's hazard insurance policy, issued or renewed on or after January 1, 2009, must contain a provision stating that the policy coverage is excess coverage over the amount recoverable under any other policy covering the same property;
- A unit owner's hazard insurance policy must include special assessment coverage of \$2,000 per occurrence;
- A unit owner's hazard insurance policy does not provide the right of subrogation against the unit owner's condominium association;
- All improvements or additions to the condominium property that benefit fewer than all unit owners must be insured by the unit owner or owners having the use thereof, or may be insured by the association at the cost and expense of the unit owners having such use;

¹⁵ Property insurance is defined under s. 624.604, F.S. The Insurance Code consists of chapters 624-632, 634, 635, 636, 641, 648, and 651, F.S. Under s. 624.604, F.S., property insurance is defined as insurance on real or personal property of every kind and of every interest, whether on land, water, or in the air, against loss or damage from all hazards or causes, and against loss consequential upon such loss or damage, other than noncontractual legal liability for any such loss or damage.

¹⁶ Casualty insurance is defined under s. 624.605, F.S.

- The association may require each owner to provide evidence of a hazard and liability insurance upon request, but not more than once per year;
- Should the unit owner fail to provide hazard and liability insurance upon written request within 30 days, the association may purchase a policy on the owner's behalf and the unit owner is responsible for the cost of the policy and for any reconstruction costs incurred by the association and such costs may be collected as assessments under s. 718.116, F.S;¹⁷ and
- The association must be an additional named insured and loss payee on all casualty insurance policies issued to unit owners in the condominium operated by the association.

Section 2. Creates s. 627.714, F.S., pertaining to condominium unit owner coverage and loss assessment coverage. For policies issued or renewed on or after October 1, 2009, a residential condominium unit owner's policy must include loss assessment coverage of at least \$2,000, after any applicable deductible due under the owner's policy. Every property insurance policy issued or renewed on or after January 1, 2010, to an individual unit owner must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property.

Section 3. Provides that the act shall take effect July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Condominium unit owners will benefit under the bill's provisions by not having to obtain property insurance coverage on their unit and by not having their association be an additional named insured and loss payee on their policy. However, if they wish to

¹⁷ Section 718.116, F.S., authorizes condominium associations to place a lien on the condominium unit for failure to pay the assessment. It also provides for interest, if the declaration or bylaws so provide, to accrue at the rate of 18 percent per year, and for late fees not to exceed the greater of \$25 or 5 percent.

purchase such insurance, they must obtain \$2,000 of loss assessment coverage, after any applicable deductible is due under the policy.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 292686 by Banking and Insurance on March 10, 2009:

- Deletes the date the condominium unit owner's policy must conform to the requirements of s. 627.714, F.S.;
- Clarifies that a unit owner's loss assessment coverage must be \$2,000 per occurrence for an assessment made as a result of loss to the property owned by all members of the condominium association collectively, when the loss is of the type covered by the owner's policy, up to the liability limit in affect at the time of assessment;
- Removes the provision providing for deductibles; and
- Makes technical changes. (WITH TITLE AMENDMENT).