

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 Regulated Industries Committee

BILL: CS/SB 714

INTRODUCER: Regulated Industries Committee and Senator Jones

SUBJECT: Condominium Insurance

DATE: March 17, 2009 REVISED: _____

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

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill revises and clarifies the property insurance requirements of condominium associations and condominium unit owners under ch. 718, F.S. (the “condominium act”). The bill corrects inconsistencies with terms used under the Florida Insurance Code and repeals certain requirements placed on condominium unit owners, including the mandate to maintain property insurance coverage, and the requirement that the condominium association must be an additional named insured and loss payee on policies issued to unit owners. The bill also repeals the provision that a condominium association may purchase property insurance at the expense of the owners place when the unit owner does not provide proof of insurance. The bill also:

- Creates a provision under the Insurance Code to require that residential condominium unit owner policies issued or renewed on or after July 1, 2009, must include loss assessment coverage of \$2,000, for all assessments made as a result of the same direct loss to the common elements of the association, regardless of the number of assessments. The loss must be of the type of loss covered by the unit owner's residential property insurance policy. The bill authorizes insurers to apply a deductible of no more than \$250 per direct property loss. A deductible does not apply if a deductible has been applied to other property loss sustained by the unit owner for the same direct loss to the property.

- Every property insurance policy issued or renewed 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 requirement that a unit owner's hazard insurance policy issued or renewed on or after January 1, 2009, must include special assessment coverage of \$2,000 per occurrence and deletes 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.

The bill would take effect upon becoming law.

This bill substantially amends section 718.111, Florida Statutes.

This bill creates section 627.714, Florida Statutes.

II. Present Situation:

Condominiums

A condominium is a "form of ownership of real property created pursuant to ch. 718, F.S., 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."¹ A condominium is created

¹ Section 718.103(11), F.S.

by recording a declaration of condominium in the public records of the county in which the condominium will be located.² A declaration is like a constitution in that it:

[S]trictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.³

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.⁴ A declaration of condominium may be amended as provided in the declaration. If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of two-thirds of the units.⁵ Condominiums are administered by a board of directors referred to as a board of administration.⁶

Condominiums are regulated by the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) of the Department of Business and Professional Regulation (department), in accordance with ch. 718, F.S.

Assessments for Condominiums

Section 718.103(1), F.S., defines an “assessment” 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., defines a “special assessment” to mean “any assessment levied against a unit owner other than the assessment required by a budget adopted annually.”

Condominium Insurance

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.⁷ The legislation provided that on or after January 1, 2004, every hazard insurance policy provided to the association include coverage for specified portions of condominium property located inside and outside of the units as well as condominium property required to be covered under the declaration of condominium.⁸ The law provided that the real or personal property located inside the boundaries of the owner’s unit, which is excluded from

² Section 718.104(2), F.S.

³ *Neuman v. Grand View at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003).

⁴ Section 718.104(5), F.S.

⁵ Section 718.110(1)(a), F.S.

⁶ Section 718.103(4), F.S.

⁷ Chapter 2003-14, L.O.F.

⁸ 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).

coverage to be provided by the association, shall be insured by the individual unit owner.⁹ In the 2007 Special Session, legislation was enacted clarifying that the above provisions apply to “residential” condominiums.¹⁰

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 in s. 718.111(11), F.S., for condominium associations and unit owners.¹¹ It specifies that adequate hazard insurance¹² 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.¹³

Section 718.111(11), F.S., permits the association to determine the insurance deductibles on the basis of available funds and predetermined assessment authority at a meeting of the board.¹⁴ 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.

Section 718.111(11), F.S., specifies 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.¹⁵ 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 coverage¹⁶ of not less than \$2,000 per occurrence. However, 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. Improvements or additions which do not benefit all of the unit

⁹ Condominium unit owners generally purchase personal residential property insurance policies in both the admitted and non-admitted markets in order to provide required coverage.

¹⁰ Chapter 2007-1, L.O.F.

¹¹ Chapter 2008-240, L.O.F.

¹² 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.

¹³ Section 718.111(11)(a), F.S.

¹⁴ Section 718.111(11)(c), F.S.

¹⁵ Section 718.111(11)(g), F.S.

¹⁶ 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., defines a “special assessment” as “any assessment levied against a unit owner other than the assessment required by a budget adopted annually.”

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 2008 amendment to s. 718.111(11), F.S., mandates 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 2008 amendment to s. 718.111(11), F.S., 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.¹⁷ 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 2008.¹⁸ 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.¹⁹ However, with the passage of the condominium legislation in 2008,²⁰ the OIR has taken the position that a deductible does not apply to loss assessment 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.

¹⁷ 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.

¹⁸ 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.

¹⁹ A deductible is the amount an insured must pay before the insurance coverage applies to a covered loss.

²⁰ Chapter 2008-240, L.O.F.

Condominium Unit Owner Insurance Responsibilities

In 2005, the division issued a declaratory statement in the matter of *Plaza East Association, Inc.*, (*Plaza East*),²¹ which presented the following question:

Whether Plaza East Association, Inc., which is required to insure the condominium property located outside the units, the property located inside the units as initially installed, and all portions of the condominium property requiring coverage by the association under section 718.111(11)(a), Florida Statutes (2003), may pass on to the unit owner the cost of repairing those items that would have otherwise been paid for by the association's insurance policy but for the application of the deductible or amounts in excess of the coverage limits, notwithstanding provisions in the declaration defining the condominium property as part of a unit with the cost of repairs to be paid for by the unit owner.

Although the declaration of condominium required that the unit owner was responsible to pay for repairs if the damage was to the portions of the unit that the unit owner was required to maintain, in *Plaza East*, the division decided that the condominium association could not shift the cost of the deductible, a common expense, to only those unit owners whose property was damaged by the insurable event such as a hurricane. The division stated that the owners of the damaged units had paid their proportionate share of the insurance to replace the damaged property, and that it was unfair to shift the risk and liability to the individual unit owners for the damages. It is also noted that holding individual unit owners liable is inconsistent with the assignment of insurable risk in s. 718.111(11), F.S.

III. Effect of Proposed Changes:

Section 1. The bill 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.²² Casualty insurance²³ 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

²¹ *In Re: Petition for Declaratory Statement Plaza East Association, Inc.*, Division of Florida Land Sales, Condominiums and Mobile Homes Declaratory Statement 2005-055, Docket No. 2005 059934, Department Final Order No. BPR-2006-00239, January 13, 2006. (“*Plaza East*”).

²² Property insurance is defined under s. 624.604, F.S. The Insurance Code consists of chs. 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.

²³ Casualty insurance is defined under s. 624.605, F.S.

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 foregoing) are located within the boundaries of the unit and serve only such unit. The bill clarifies that the excluded property 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. (see 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;
- 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.,²⁴ 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. The bill creates s. 627.714, F.S., pertaining to condominium unit owner coverage and loss assessment coverage. For policies issued or renewed on or after July 1, 2009, a residential condominium unit owner's policy must include loss assessment coverage of at least \$2,000, for all assessments made as a result of the same direct loss to the association property, regardless of the number of assessments. The loss must be of the type of loss covered by the unit owner's residential property insurance policy. The bill authorizes insurers to apply a deductible of no

²⁴ 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.

more than \$250 per direct property loss. A deductible does not apply if a deductible has been applied to other property loss sustained by the unit owner for the same direct loss to the property.

Every property insurance policy issued or renewed 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. The bill provides that the act shall take effect upon becoming law.

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 purchase such insurance, they must obtain \$2,000 of loss assessment coverage, after any applicable deductible is due under the policy. The deductible may not exceed \$250 per direct property loss.

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.)

CS by Regulated Industries on March 17, 2009:

The committee substitute (CS) amends s. 718.111(11)(f)3, F.S., to clarify that the types of property excluded from the association's insurance coverage are located within the boundaries of the unit and that the excluded types of property serve only such unit.

The CS also makes technical changes to s. 718.111(11), F.S., by replacing the term "casualty" with the term "property" in the context of the referenced insurance coverage.

The CS amends s. 627.714, F.S., to clarify that, for policies issued or renewed on or after July 1, 2009, a residential condominium unit owner's policy must include loss assessment coverage of at least \$2,000, for all assessments made as a result of the same direct loss to the association property, regardless of the number of assessments. The loss must be of the type of loss covered by the unit owner's residential property insurance policy. The CS authorizes insurers to apply a deductible of no more than \$250 per direct property loss. A deductible does not apply if a deductible has been applied to other property loss sustained by the unit owner for the same direct loss to the property.

The CS does not provide a January 1, 2010 effective date in s. 627.714, F.S., for the requirement that every property insurance policy issued or renewed 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.

The CS changes the effective date from July 1, 2009 to upon becoming law.

- B. **Amendments:**

None.