

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 968

INTRODUCER: Regulated Industries Committee and Senator Justice

SUBJECT: Condominiums/Notice of Delinquency

DATE: April 13, 2010 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|---------------|
| 1. | Oxamendi | Imhof | RI | Fav/CS |
| 2. | | | CA | |
| 3. | | | JU | |
| 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:

The Condominium Act in ch. 718, F.S., authorizes condominium associations to impose assessments on condominium unit owners. If assessments are not paid, the bill requires condominium associations to send a written notice of their intent to refer a collection matter to its attorney or third party debt collector. The bill provides exceptions to the notice requirement if the unit owner acknowledges in writing that he or she owes the debt to the association, or if the association has been in lien collection or foreclosure proceedings with the same unit owner or owner within the preceding twelve month period. The bill also requires the association to send unit owners who may be delinquent in the payment of an assessment a notice of delinquency that includes relevant information about the delinquency, including the overall total of assessments claimed by the association, the balance owed for the assessment or charge, and affiliated late fees or collection charges.

Under current law, a unit owner who is delinquent in the payment of an assessment is not eligible for membership on the board of the association. If a director or officer of the association is more than 90 days delinquent in the payment of regular assessments, the director or officer is deemed to have abandoned the office. The association may also condition the lease of the unit on the basis of whether a unit owner is delinquent in the payment of an assessment at the time approval

is sought. The bill also provides that no restriction or condition upon a unit owner related to the delinquency may not go into effect until 20 days after the unit owner receives the detailed notice of delinquency. If the unit owner objects to the claim within the 20 day period and shows that the owner has paid the disputed amount, the restriction or condition may not go into effect until the objection is resolved.

This bill substantially amends section 718.116, 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 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:

Strictly 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 not less than two-thirds of the unit owners.⁵ Condominiums are administered by a board of directors referred to as a “board of administration.”⁶

Condominiums are regulated by the Division of Condominiums, Timeshares, and Mobile Homes (division) of the Department of Business and Professional Regulation (department), in accordance with ch. 718, F.S. (Condominium Act.)⁷

Condominium – Assessments and Penalties - 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.”

¹ Section 718.103(11), F.S.

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 Section 718.101, F.S., provides that ch. 718, F.S., may be cited as the “Condominium Act.”

A unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.⁸

Section 718.112(2)(d)1., F.S., provides that a person who is delinquent in the payment of any fee or assessment as provided in s. 718.112(2)(n), F.S., is not eligible for board membership. Section 718.112(2)(n), F.S., provides that a director or officer of the association who is more than 90 days delinquent in the payment of regular assessments shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

Section 718.116(4), F.S., permits an association, if the association is authorized by the declaration or bylaws, to approve or disapprove a proposed lease of a unit on the basis of a unit owner being delinquent in the payment of an assessment at the time approval is sought.

Some condominium documents permit the board to impose penalties that deny voting rights to unit owners or deny owners the right to use condominium property. However, the Condominium Act does not provide for such penalties, and any such provision in condominium documents are likely unenforceable.⁹

III. Effect of Proposed Changes:

The bill creates subsection (11) of s. 718.116, F.S., relating to unit owners who may be delinquent in the payment of assessments.

The bill amends s. 718.116(11)(a), F.S., to require that condominium associations must, before referring a collection matter to its attorney or other third party debt collector, first give the unit owner a written notice of its intention to do so. The written notice must be sent to the unit owner at least 30 days before the matter is referred to the association's attorney or other third party debt collector. If the written notice is not sent to the unit owner, the association cannot recover attorney's fees or costs in a subsequent lawsuit to collect the debt.

The bill requires that the notice must be given to the unit owner by hand delivery or by certified or registered mail, return receipt requested. The notice must be addressed to the unit owner at his or her last known address. However, if the unit owner acknowledges in writing that he or she owes the debt to the association, the notice requirements are also satisfied. The written notice requirement also does not apply if the association has been in lien collection or foreclosure proceedings with the same unit owner or owner within the preceding twelve-month period.

The CS also amends s. 718.116(1)(a), F.S., to require that the notice of delinquency must also state the total amount due to the association.

⁸ Section 718.116(1), F.S.

⁹ Peter M. Dunbar, *The Condominium Concept, A Practical Guide for Officers, Owners, Realtors, Attorney's, and Directors of Florida Condominiums*, 11th ed., s. 13.7 (Pineapple Press, Inc. 2008).

Paragraph (a) of s. 718.116(11), F.S., also requires a condominium association to send a notice of delinquency with an overall total of assessments claimed by the association. The notice must list:

- Each assessment or charge;
- The date of the assessment or charge;
- The principal balance owed for the assessment or charge;
- Collects and late fees; and
- The total amount due to the association.

Section 718.116(1)(a), F.S., appears to require two separate notices. The first notice referenced in the paragraph relates to the notice of intent to refer a collection matter to the association's attorney or a third party debt collector and the second referenced notice relates to the notice of delinquency.

Paragraph (b) of s. 718.116(11), F.S., provides that no restriction or condition upon a unit owner related to the delinquency may not go into effect until 20 days after the unit owner receives the detailed notice of delinquency. If the unit owner objects to the claim within the 20 day period and shows that the owner has paid the disputed amount, the restriction or condition may not go into effect until the objection is resolved.

The bill provides that a "restriction or condition" includes any restriction on running for office, holding office, serving on a committee, leasing the unit, or using common areas.

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:

As provided in s. 718.116(11)(a), F.S., unit owners who may be delinquent in the payment of an assessment owed to a condominium association would be entitled to

receive notice of delinquency from the association that includes relevant information about the delinquency, including the overall total of assessments claimed by the association, the balance owed for the assessment or charge, and affiliated late fees or collection charges.

The bill also creates s. 718.116(11)(a), F.S., to provide that no restriction or condition upon a unit owner related to the delinquency may not go into effect until 20 days after the unit owner receives the detailed notice of delinquency. If the unit owner objects to the claim within the 20 day period and shows that the owner has paid the disputed amount, the restriction or condition may not go into effect until the objection is resolved.

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 April 12, 2010:

The committee substitute (CS) amends s. 718.116(11)(a), F.S., to require that the condominium association send a written notice of its intent to refer a collection matter to its attorney or third party debt collector. The CS specifies how the notice must be delivered and provides exceptions to the notice requirement if the unit owner acknowledges in writing that he or she owes the debt to the association, or if the association has been in lien collection or foreclosure proceedings with the same unit owner or owner within the preceding twelve-month period.

B. **Amendments:**

None.