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 Judiciary Committee

BILL: CS/CS/CS/SB's 1196 & 1222

INTRODUCER: Judiciary Committee, Military Affairs and Domestic Security Committee, Regulated Industries Committee, Senator Fasano, and others

SUBJECT: Community Associations

DATE: April 9, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/Combined CS**
2.	Pardue	Pardue	MS	**Fav/CS**
3.	Treadwell	Maclure	JU	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill revises laws related to community associations, including condominium, homeowners', and cooperative associations. The bill permits condominium, cooperative, and homeowners' associations to demand payment of any future regular assessments from the tenant of a unit or parcel owner.

The bill revises and clarifies the property insurance requirements of condominium associations and condominium unit owners under ch. 718, F.S. The bill repeals the requirement that condominium unit owners must 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. It repeals the provision that a condominium association may purchase property insurance at the expense of the owner when the unit owner does not provide proof of insurance. It requires that residential condominium unit owner policies issued or renewed on or after July 1, 2010, include loss assessment coverage of $2,000, for certain assessments with a deductible of no more than $250 per direct property loss. The bill also sets limits for the amount of a unit owner's loss assessment coverage that can be assess for any loss.

The bill creates the "Distressed Condominium Relief Act" to define the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties.

Regarding condominium associations, the bill:

- Requires intent to cause harm to the association or one or more of its members in order for a person to knowingly or intentionally fail to create or maintain accounting records;
- Expands the forms of information in the association's records that are not accessible to unit owners to include disciplinary, health, insurance, and personnel records, and passwords;
- Revises the requirements related to financial reporting by the association;
- Includes communication services, information services, and Internet services within the scope of the types of bulk contracts that may be considered common expenses;
- Revises requirements related to the election of board members, the terms of board offices, vacancies on the board, and the qualifications of board members. It provides for a post-election certification by each newly elected or appointed director, and permits completion of the educational curriculum as an alternative to a written certification;
- Provides that unit owners must vote to forego retrofitting and engineered lifesafety system by the affirmative vote of a majority of all voting interests in the affected condominium;
- Requires a foreclosing lender to pay up to 12 months of delinquent assessments rather than 6 months of assessments under current law; and
- Authorizes the suspension of a unit owner's rights to use certain association facilities if he or she is more than 90-days delinquent for a regular or special assessment.

Regarding homeowners' associations, the bill also:

- Permits closure of certain board meetings at which proposed or pending litigation is discussed with the association's attorney;
- Revises the notice requirements for financial reports regarding reserve accounts;
- Prohibits directors, officers, or committee members from receiving any salary or compensation from the association for the performance of their duties;
- Permits the association to charge reasonable costs for copying records, including personnel fees and charges at an hourly rate for employee time to cover the administrative costs;
- Authorizes condominium associations to suspend a unit owner's use rights if the unit owner is delinquent for more than 90 days in the payment of a regular of special assessment;
- Permits fines of $1,000 or more to become a lien on a parcel;
- Revises proxy voting and elections requirements;
- Provides additional disclosures to prospective purchasers;
- Revises requirements for special assessments in homeowners' associations before the turnover of the association by the developer;

- Provides that flagpoles that homeowners are entitled to erect are subject to all building codes, zoning setbacks, noise and lighting ordinances, and other government regulations; and
- Permits homeowners' associations to acquire leaseholds, memberships, or other possessory interests in recreational facilities, including country clubs, golf courses, and marinas.

It permits condominium, cooperative, and homeowners' associations to demand payment from the tenant of any unit or parcel owner who owes unpaid monetary obligations to the association. The tenant receives credit for any prepaid rent for the applicable period, and the amount of a tenant's rent owed to a unit or parcel owner is credited to any amount he or she has paid to the association. The association may evict the tenant if he or she fails to make the required payment.

The bill allows a condominium to forego the requirement for emergency generated power for elevators in high-rise multifamily dwellings over 75 feet in height upon an affirmative vote of a majority of the voting interests of the condominium.

This bill substantially amends the following sections of the Florida Statutes: 399.02, 617.0721, 617.0808, 633.0215, 718.103, 718.110, 718.111, 718.112, 718.115, 718.116, 718.117, 718.202, 718.301, 718.303, 718.501, 719.106, 719.108, 719.1055, 720.303, 720.304, 720.305, 720.306, 720.3085, and 720.31.

This bill creates the following sections of the Florida Statutes: 617.1606, 627.714, 718.701, 718.702, 718.703, 718.704, 718.705, 718.706, 718.707, 718.708, and 720.315.

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 the owners

[1] Section 718.103(11), F.S.
[2] Section 718.104(2), F.S.
[3] *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003).
[4] Section 718.104(5), F.S.

of two-thirds of the units.[5] Condominiums are administered by a board of directors referred to as a "board of administration."[6]

Division of Florida Condominiums, Timeshares, and Mobile Homes

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

The division is afforded the complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., with respect to associations that are still under developer control.[7] It also has the authority to investigate complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301, F.S. After control of the condominium is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S.

As part of the division's authority to investigate complaints, s. 718.501(1), F.S., provides the division with the authority to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

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. 718.111(11), F.S.[8] The legislation provided that on or after January 1, 2004, every hazard insurance policy provided to the association must 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.[9] 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, must be insured by the individual unit owner.[10] During the 2007 Special Session, legislation was enacted clarifying that the above provisions apply to "residential" condominiums.[11]

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[5] Section 718.110(1)(a), F.S.
[6] Section 718.103(4), F.S.
[7] Section 718.501(1), F.S.
[8] Chapter 2003-14, Laws of Fla.
[9] Florida Office of Insurance Regulation (OIR), *Condominium Insurance Report* (Nov. 19, 2004), *available at* http://www.floir.com/pdf/Condo_Study.pdf (last visited Mar. 31, 2010). 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).
[10] Condominium unit owners generally purchase personal residential property insurance policies in both the admitted and non-admitted markets in order to provide required coverage.
[11] Chapter 2007-1, Laws of Fla.

The legislation further provided that windstorm insurance coverage for a group of three or more communities operating under the Condominium Act (ch. 718, F.S.) 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.

In 2008, comprehensive condominium legislation was enacted to revise and clarify the insurance requirements in s. 718.111(11), F.S., for condominium associations and unit owners.[12] The act specifies that adequate hazard insurance[13] 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.[14]

The association may determine the insurance deductibles on the basis of available funds and predetermined assessment authority at a meeting of the board.[15] 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.

Existing law 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.[16] Such policy must contain a provision providing that the coverage afforded by the policy is excess coverage over the amount recoverable under any other policy covering the same property. Also, such policies must include a special assessment coverage[17] of not less than $2,000 per occurrence. However, a policy issued to an individual unit owner does not provide rights of subrogation against the condominium association operating the condominium in which the individual's unit is located. Improvements or additions that 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.

Current law 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.[18] 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

[12] Chapter 2008-240, Laws of Fla.
[13] Hazard insurance is not a usual or customary term under the Insurance Code. The term "property" insurance is utilized under the Insurance Code and refers to real or personal property.
[14] Section 718.111(11)(a), F.S.
[15] Section 718.111(11)(c), F.S.
[16] Section 718.111(11)(g), F.S.
[17] The Florida 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) (on file with the Senate Banking and Insurance Committee). Under 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."
[18] Chapter 2008-240, Laws of Fla.

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 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.[19]

Loss Assessment Coverage and Deductibles

In general, all condominium unit owner property insurance policies provide for loss assessment coverage.[20] Effective January 1, 2009, those policies are required to include an assessment coverage of not less than $2,000 per occurrence.[21] 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.[22] However, with the passage of legislation in 2008, the Office of Insurance Regulation (OIR) has taken the position that a deductible does not apply to loss assessment coverage under a unit owner's policy.[23] Representatives with the OIR state that the Insurance Services Office forms approved prior to the passage of the 2008 legislation do apply a policy deductible for loss assessment claims.

Condominium – Official Records

Existing law requires that the official records of a condominium association must be maintained within the state for at least seven years.[24] The records must be made available to the unit owner within 45 miles of the condominium property or within the county in which the condominium property is located. The records must be made available within five working days after a written request is received by the governing board of the association or its designee. The records may be made available by having a copy of the official records of the association available for inspection

[19] *Id.*
[20] The Insurance Services Office (ISO) writes and provides to insurers standard condominium unit owner property insurance policy forms (HO-6 policies) that 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.
[21] Chapter 2008-240, Laws of Fla.
[22] A deductible is the amount an insured must pay before the insurance coverage applies to a covered loss.
[23] Chapter 2008-240, Laws of Fla.
[24] Section 718.111(12), F.S.

or copying on the condominium property or association property. Alternatively, the association may offer the option of making the records of the association available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

The association must maintain accounting records and separate accounting records for each condominium that the association operates.[25] All accounting records must be maintained for a period of not less than seven years. The statute prohibits any person from knowingly or intentionally defacing or destroying accounting records required to be maintained by ch. 718, F.S. It also prohibits knowingly or intentionally failing to create or maintain accounting records required to be maintained by ch. 718. F.S. Persons who violate this provision are personally subject to a civil penalty pursuant to s. 718.501(1)(d), F.S.

Condominiums – Financial Reporting

Section 718.111(13), F.S., sets forth the financial reporting responsibilities of the association. A condominium association has 90 days to prepare and complete a financial report for the preceding fiscal year either after the end of the fiscal year or annually as provided by bylaws. The types of financial statements or information that must be provided are based on the total annual revenues of the association. If the association has a total annual revenue of $100,000 or more, but less than $200,000, the association must prepare compiled financial statements.[26] If the association has a total annual revenue of at least $200,000 and not less than $400,000, the association must prepare reviewed financial statements.[27] If the total annual revenue is $400,000 or more, the association must prepare audited financial statements.[28] If the total annual revenue is less than $100,000, a report of cash receipts must be prepared. An association with less than 50 units regardless of annual revenue must prepare a report of cash receipt and expenditures instead of financial statements.[29] Meetings and approval of budgets must occur prior to the end of the fiscal year.[30]

Condominium – Assessments and Foreclosures

Current law 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."[31]

"Special assessment" is defined to mean "any assessment levied against a unit owner other than the assessment required by a budget adopted annually."[32] A unit owner is jointly and severally

[25] Section 718.111(12)(a)11., F.S.
[26] Section 718.111(13)(a), F.S. According to information provided by Florida Institute of Certified Public Accountants (FICPA), a compilation of financial statements does not provide an expression of assurance regarding the financial statements and whether modifications to the financial statements are necessary.
[27] According to information provided by FICPA, a review of financial statements provides the accountant with a reasonable basis for expressing a limited assurance that there are no material modifications that should be made to the statements for them to be in conformity with Generally Accepted Accounting Principles (GAAP).
[28] According to information provided by FICPA, an audit of financial statements permits the accountant to provide a reasonable basis for expressing an opinion regarding all material respects of the financial statements.
[29] Section 718.111(13)(b)(2),F.S.
[30] Section 718.111(13)(d), F.S.
[31] Section 718.103(1), F.S.

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.[33]
If a first mortgagee, (e.g., the mortgage lending bank) or its successor or assignee, acquires title to a condominium unit by foreclosure or by deed in lieu of foreclosure, the first mortgagee's liability for unpaid assessments is limited to the amount of assessments that came due during the six months immediately preceding the acquisition of title or 1 percent of the original mortgage debt, whichever is less.[34] However, this limitation applies only if the first mortgagee joined the association as a defendant in the foreclosure action. This gives the association the right to defend its claims for unpaid assessments in the foreclosure proceeding. A first mortgagee who acquires title to a foreclosed condominium unit is exempt from liability for all unpaid assessments if the first mortgage was recorded prior to April 1, 1992.

The successor or assignee, in respect to the first mortgagee, includes only a subsequent holder of the first mortgage.

Condominiums – Implied Warranties

One of the effects of the downturn in the housing market is the large number of uncompleted condominium buildings, some of which have outstanding purchase contracts. Some of the completed condominiums have a large number of unfinished units within the building. Generally, these assets, typically condominium units, are acquired by investors as bulk acquisitions and the acquisitions, take place in one of two forms:

- The assets are purchased from developers or banks that have foreclosed on the development loan or on the property; or
- The assets are acquired through the purchase of discounted debt from lenders.

The purchase and sale of condominium units can involve additional expenses, construction delays, rescinded purchase contracts, regulatory and legal actions, slower sales, third-party claims, reduced rental rates, failed financial models, and the retention of developer rights by the bulk acquisition agent. Other considerations are the liabilities and obligations that the purchaser may incur for construction defects and warranty claims.

The developer of a condominium is deemed to have granted to the purchaser of each unit an implied warranty of fitness and merchantability for three years beginning with the completion of the building containing the unit, and a warranty for the same period that is provided by the manufacturer for personal property transferred with or appurtenant to the unit.[35] For all other improvements, the implied warranty is for three years beginning with the date of completion of the improvements. For the roof and structural components of a building or other improvements, or for the mechanical, electrical, and plumbing elements serving a building or improvement, the warranty is for a three-year period beginning with the completion of construction of the building

[32] Section 718.103(24), F.S.
[33] Section 718.116(1)(a), F.S.
[34] Section 718.116(1)(b), F.S.
[35] Section 718.203, F.S.

or improvement, or for one year after the developer transfers control of the condominium association. In no event may the warranty extend for more than five years.

Unit owners have a right to bring an action for an implied warranty claim,[36] and the association has a right to act on behalf of the unit owners in matters of common interest.[37]

In *Chotka v. Fidelco Growth Investors*,[38] the defendant construction lender had foreclosed against the developer for defaulting on the construction loan. The plaintiff condominium residents association sued the construction lender for damages and defects or omissions relating to construction defects of the condominium building and common areas. The trial court dismissed the implied warranty claim of the condominium association. The Second District Court of Appeal reversed and held that where a lender obtains title to a condominium project, completes construction, while holding itself out as the developer and owner of the project, and advertises and sales units, the lender is a developer of the project to the extent that it might be liable for performance of express representations made to purchasers for patent construction defects and for breach of any warranties attributable to those defects.[39]

Unpaid Assessments for Condominiums in Foreclosure

A first mortgagee or its successor or assignee who acquires title to a unit by foreclosure or by deed in lieu of foreclosure is liable for any unpaid assessments that become due before the mortgagee's acquisition of the title is limited to:

- The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 6 months immediately preceding the acquisition of title and for which payment has not been received by the association; or
- One percent of the original mortgage debt.[40]

This liability only applies if the first mortgagee joined the association as a defendant in the foreclosure action.

Condominiums – Escrow Deposits

If a developer contracts to sell a condominium parcel and the construction, furnishing, and landscaping of the property submitted or proposed to be submitted to condominium ownership has not been substantially completed, the developer must pay into an escrow account all payments up to 10 percent of the sale price received by the developer from the buyer towards the sale price.[41] All payments which are in excess of the 10 percent of the sale price and which have been received prior to completion of construction by the developer on a contract for purchase of a condominium parcel must be held in a special escrow account and controlled by an escrow

[36] *Rogers & Ford Constr. Corp., etc., et al v. Carlandia Corp.,* 626 So. 2d 1350 (Fla. 1993).
[37] *Charley Toppino & Sons, Inc. v. Seawatch at Marathon Condominium Ass'n, Inc.,* 658 So. 2d 922 (Fla. 1994).
[38] *Chotka v. Fidelco Growth Investors,* 383 So. 2d 1169 (Fla. 2d DCA 1980).
[39] *Id.* at 1169.
[40] Sectio 718.116(1)(b), F.S.
[41] Section 718.202(1), F.S.

agent. The funds may not be accessed by the developer prior to closing the transaction except for limited circumstances.[42]

Special Assessments for Cooperatives

"Special assessments" are any assessment levied against a unit owner other than the assessment required by a budget adopted annually.[43] Each unit owner in a cooperative association must be given written notice explaining the specific purpose of any special assessment that is approved in accordance with the governing documents of the association.[44] Any funds that are collected pursuant to a special assessment must be used only for the specific purpose stated in the notice to the unit owner.[45] Any excess funds are considered "common surplus" under the Cooperative Act.[46]

Homeowners' Associations – Background

Florida law provides statutory recognition to corporations that operate residential communities in this state, provides procedures for operating homeowners' associations, and protects the rights of association members without unduly impairing the ability of such associations to perform their functions.[47]

A "homeowners' association" is defined as a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.[48] Unless specifically stated to the contrary, homeowners' associations are also governed by ch. 617, F.S., relating to not-for-profit corporations.[49]
Homeowners' associations are administered by a board of directors whose members are elected.[50] The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.[51] The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.[52]

[42] Section 718.202(2), F.S.
[43] Section 719.103(23), F.S.
[44] Section 719.108(9), F.S.
[45] *Id.*
[46] *Id.*
[47] *See* s. 720.302(1), F.S.
[48] Section 720.301(9), F.S.
[49] Section 720.302(5), F.S.
[50] *See* ss. 720.303 and 720.307, F.S.
[51] *See* ss. 720.301 and 720.303, F.S.
[52] Section 720.303(1), F.S.

Homeowners' Associations – Meetings

Existing law provides procedures for homeowners' association board meetings.[53] A meeting of the board occurs whenever a quorum of the board gathers to conduct association business. Board meetings are open to all members, except for meetings between the board and its attorney relating to proposed or pending litigation. Members also have the right to attend all board meetings and speak for at least three minutes on any matter placed on the agenda by petition of the voting interests.[54]

The open meetings requirement does not apply to meetings between the board or a committee and the association's attorney, with respect to meetings of the board held for the purpose of discussing personnel matters.

Notice of a board meeting must be posted in a conspicuous place in the community at least 48 hours prior to a meeting, except in an emergency. If notice of the board meeting is not posted in a conspicuous place, notice of the board meeting must be mailed or delivered to each association member at least seven days prior to the meeting, except in an emergency. For associations with more than 100 members, the bylaws may provide a reasonable alternative to this posting or mailing requirement. These alternatives include publication of notice, provision for schedules of board meetings, conspicuous posting and repeated broadcasting of a notice in a certain format on a closed-circuit cable television system serving the association, or electronic transmission if the member consents in writing to such transmission.[55]

Homeowners' Associations – Budgets

Homeowners' associations must prepare an annual budget that sets out the annual operating expenses.[56] The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year.

Regarding reserve accounts, s. 720.303(6)(b), F.S., provides:

> In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the association is responsible to the extent that the governing documents do not limit increases in assessments, including reserves. If the budget of the association includes reserve accounts, such reserves shall be determined, maintained, and waived in the manner provided in this subsection. Once an association provides for reserve accounts in the budget, the association shall thereafter determine, maintain, and waive reserves in compliance with this subsection.

If reserve accounts are not initially provided for by the developer, the membership of the association may elect to do so by an affirmative vote of a majority of the total voting interests.

[53] Section 720.303(2), F.S.
[54] Section 720. 301(13), F.S., defines "voting interest" to mean the voting rights distributed to the members of the homeowners' association, pursuant to the governing documents.
[55] Section 720.303(2)(c)1., F.S.
[56] Section 720.303(6)(a), F.S.

Once established, the reserve accounts must be funded, maintained, or have their funding waived.[57] If the association's budget does not provide for reserve accounts and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided, current law requires that the association's financial reports include a notice that the budget does not provide for reserve accounts for capital expenditures and deferred maintenance that may result in special assessments.[58]

Funding formulas for reserves can be based on either a separate analysis for each of the required assets or a pooled analysis of two or more of the required assets. If the association maintains a pooled account, the amount of the contribution to the pooled reserve account must not be less than required to ensure the balance on hand at the beginning of the period for which the budget will go into effect, plus the projected annual cash inflows over the remaining estimated useful life of the assets. The projected annual cash inflows may include earning statements from investment of any principal.[59]

Homeowners' Associations – Display of Flag

Homeowners may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and one portable, removable official flag, in a respectful manner, not larger than 4½ feet by 6 feet, which represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag.[60] This right exists, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association.

A homeowner may also erect a freestanding flagpole no more than 20 feet high on any portion of the homeowner's real property, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association, if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement.[61] Homeowners may display the same flags that are specified under s. 720.304(2)(a), F.S.

Alternate Power Generators for Elevators

During the 2006 Regular Session, s. 553.509(2)(a), F.S.,[62] was enacted to require that any person, firm, or corporation that owns, manages, or operates a residential multifamily dwelling, including a condominium, which is at least 75-feet high (high-rise residential buildings) and contains a public elevator, have at least one elevator capable of operating on alternate generated power. In the event of a general power outage, this elevator must ensure that residents have building access for an unspecified number of hours each day over a five-day period following a natural or manmade disaster, emergency, or other civil disturbance. The alternate generated power source must be capable of powering any connected fire alarm system in the building.

[57] Section 720.303(6)(d), F.S.
[58] Section 720.303(6)(c), F.S.
[59] Section 720.303(6)(g), F.S.
[60] Section 720.304(2)(a), F.S.
[61] Section 720.304(2)(b), F.S.
[62] Chapter 2006-71, s. 12, Laws of Fla.

The alternate generated power requirements under current law do not apply to high-rise buildings that were in existence on October 1, 1997, or which were either under construction or under contract for construction on October 1, 1997.[63] Newly constructed residential multifamily dwellings meeting the criteria of this section must meet the engineering, installation, and verification requirements of s. 553.509(2), F.S., before occupancy.[64]

At a minimum, the elevator must be appropriately pre-wired and prepared to accept alternate generated power.[65] The power source must be capable of powering the elevator, a connected building fire alarm system, and emergency lighting in the internal lobbies, hallways, and other internal public portions of the building. The dwellings must either have a generator and fuel source on the property or proof of a current guaranteed service contract providing such equipment and fuel source within 24 hours of a request. Proof of a current service contract for such equipment and fuel must be posted in the elevator machine room or other place conspicuous to the elevator inspector.

Verification Requirements

A person, firm, or corporation that owns, manages, or operates a building affected by this requirement must provide to the local building inspection agency verification of engineering plans for alternate generated power capability by December 31, 2006.[66] The local building inspectors must verify the installation and operational capability of the alternate generated power source and report to the county emergency management director by December 31, 2007.

Posting Requirements

The owner, manager, or operator of the high-rise residential building must keep written records of any contracts for alternative power generation equipment and fuel source.[67] Quarterly inspection records of life-safety equipment and alternate power generation equipment must also be posted in the elevator machine room or other place conspicuous to the elevator inspector.[68]

Emergency-Operations-Plan Requirements

Each person, firm, or corporation that is required to maintain an alternate power source must also maintain a written emergency operations plan that details the sequence of operations before, during, and after a natural or manmade disaster or other emergency situation.[69] The plan must include, at a minimum, a life-safety plan for evacuation, maintenance of the electrical and lighting supply, and provisions for the health, safety, and welfare of the residents.

[63] Section 553.507, F.S., exempts such buildings, structures, and facilities from the provisions of ss. 553.501-553.513, F.S., the "Florida Americans with Disabilities Implementation Act."
[64] Section 553.509(2)(c), F.S.
[65] Section 553.509(2)(b), F.S.
[66] *Id.*
[67] Section 553.509(2)(b), F.S.
[68] Section 553.509(2)(d), F.S.
[69] *Id.*

The written emergency operations plan and inspection records must be open for periodic inspection by local and state government agencies.[70] The owner or operator must keep a generator key in a lockbox posted at or near any installed generator unit.[71]

Residential Dwellings for Persons Age 62 and Older

Existing law requires that multi-story affordable residential dwellings for persons age 62 and older that are financed or insured by the United States Department of Housing and Urban Development must make every effort to obtain grant funding from the Federal Government or the Florida Housing Finance Corporation to comply with the requirements of s. 553.509(2), F.S.[72] It provides that, if an owner of such a residential dwelling cannot comply with the requirements of this subsection, the owner must develop a plan with the local emergency management agency to ensure that residents are evacuated to a place of safety in the event of a power outage resulting from a natural or manmade disaster or other emergency situation that disrupts the normal supply of electricity for an extended period of time. A place of safety may include, but is not limited to, relocation to an alternative site within the building or evacuation to a local shelter.

Inspections

Certified elevator inspectors must confirm that all installed generators are in working order, the elevators have current inspection records posted, and a generator key is located near the generator.[73] If there is no installed generator, the inspector is required to confirm that the appropriate pre-wiring and switching capabilities are present and that the guaranteed contingent service contract is posted.

Senate Review of Elevator Safety and Regulation

The October 2008 interim report prepared by the professional staff of the Senate Regulated Industries Committee also studied the extent of compliance with s. 553.509(2), F.S., and reviewed the problems that citizens and governmental agencies have had in implementing these requirements.[74] Senate professional staff recommended that the Legislature consider the repeal of s. 553.509(2), F.S. The repeal recommendation was based upon the following findings and conclusions:

- The requirement may pose a threat to public safety, i.e., the availability of emergency power for elevators during the five days after a declared state of emergency may encourage persons to stay in high-rise buildings and areas that are not safe and do not have the necessary infrastructure for safe habitation;
- The requirement does not have a clearly defined state or local agency that is responsible for its on-going enforcement;

[70] *Id.*
[71] *Id.*
[72] Section 553.509(2)(e), F.S.
[73] Section 553.509(2)(f), F.S.
[74] Comm. on Regulated Industries, The Florida Senate, *Review of Elevator Safety and Regulation* (Interim Report 2009-125) (Sept. 2008), *available at* http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-125ri.pdf.

- Enforcement of the requirement by a state agency would carry a fiscal burden without a clearly defined benefit that may outweigh the public safety concerns;
- The requirement does not appear to have any clearly defined impact on elevator safety;
- It is not clear what penalty, if any, should be imposed on building owners who cannot comply with the requirement because they cannot afford the expense; and
- To the extent that an alternate emergency power for elevators provides a public benefit, the Florida Building Code currently requires emergency power for elevators in new high-rise residential construction.

Alternatively, the professional staff recommended that the Legislature could continue to require emergency generated power pursuant to s. 553.509(2), F.S., but, to ensure uniform compliance, provide funding for the Bureau of Elevator Safety within the Division of Hotels and Restaurants, Department of Business and Professional Regulation, for the enforcement of this provision.

Post Hurricane Wilma Legislative Hearings

The Legislature held committee hearings in South Florida in the aftermath of 2005's Hurricane Wilma. These hearings highlighted that significant damage to the region's electrical grid caused many high-rise residential building occupants to become stranded on the upper building floors in the absence of working elevators. Section 553.509(2), F.S., established requirements for alternate power operations of at least one elevator in such buildings for an unspecified number of hours each day for up to five days to mitigate the problem.

Lessons learned from Hurricane Floyd, in 1999, indicated that an evacuation of a high density population center such as the South Florida region can require almost three days to clear a substantial portion of the population to as far away as Orlando. Current storm evacuation strategy envisions short evacuation distances, generally within a county, mainly to avoid storm surge. Emergency shelter strategy envisions sheltering those persons whose residences are at risk due to flooding potential or the inability to withstand high wind loading as well as those persons with special medical needs. Persons living in reinforced concrete high-rise structures that are capable of withstanding high wind loads are often encouraged by emergency managers to prepare themselves to be self-sufficient for a minimum of three days and to shelter-in-place. If the electrical power grid cannot be substantially restored within three days, then emergency planning contingencies must be prepared to support the needs of persons, particularly the elderly and those with physical disabilities, who will not be able descend and climb multiple flights of stairs. This may then require additional emergency shelter arrangements for a significantly large population.

Current Division of Emergency Management estimates for Category 5 general population shelter spaces for the South Florida Region is 124,804. The current inventory of American Red Cross standards compliant shelter spaces for South Florida is 164,197. However, six of Florida's eleven RPC regions have deficits of standards compliant shelter spaces. Florida as a whole has a deficiency of 315,285 standards compliant general population spaces.[75] While the South Florida

[75] Florida Division of Emergency Management, *2010 Statewide Emergency Shelter Plan* (2010), *available at* http://www.floridadisaster.org/Response/engineers/SESPlans/2010SESPlan/documents/2010-SESP-maintext-final.pdf (last visited Mar. 31, 2010).

Region's inventory exceeds estimated demand, additional demand for shelter spaces by high-rise building residents who are unable to remain in their residences because of inoperable elevators, may well exceed the region's current excess shelter capacity.

Section 553.509(2), F.S., does not affect elevator safety *per se*. The requirement for inspection of pre-wiring installation for alternate emergency power operation of a high-rise building's elevator is designed to ensure the safety of electrical grid repair personnel. Improperly wired generators have led to deaths by electrocution among grid repair personnel.

III. Effect of Proposed Changes:

Safety Code for Existing Elevators and Escalators (Section 1)

The bill amends s. 399.02, F.S., relating to updates to the code requiring modifications for Phase II Firefighters' Service on existing elevators as amended into the Safety Code for Existing Elevators and Escalators, ASME A17.1 and A17.3. The code modifications may not be enforced on elevators in condominiums or cooperatives issued a certificate of occupancy as of July 1, 2008, for five years or until the elevator is replaced or requires major modification. This exception does not apply to a building for which a certificate of occupancy was issued after July 1, 2008. This exception does not prevent the elevator owner from requesting a variance nor prohibit the division from granting a variance pursuant to s. 120.542, F.S. The division is directed to adopt rules to administer this section.

Corporations Not for Profit (Sections 2-4)

The bill amends the following provisions to provide exceptions for condominiums, cooperatives, and homeowners' associations under chs. 718, 719, and 720, F.S., respectively:

- Section 617.0721, F.S., relating to voting requirements for members of the corporation; and
- Section 617.0808, F.S., relating to removal of corporate directors.

The bill also creates s. 617.1606, F.S., to provide an exception for condominiums, cooperatives, and homeowners' associations from the provisions of s. 617.1601 through s. 617.1605, F.S., which relate to corporate records and financial reporting requirements.

Chapters 718, 719, and 720, F.S., currently provide requirements relating to voting by members, removal of directors, records and financial reporting, including access to records, for condominiums, cooperatives, and homeowners associations.

Fire Alarm Systems (Section 6)

The bill amends s. 633.0215, F.S., the Florida Fire Prevention Code, to exempt a condominium or multifamily residential building that is less than four stories in height and which has an exterior means of egress corridor from installing a manual fire alarm system required by the Life Safety Code adopted in the Fire Prevention Code.

Renting of Condominium Units (Section 8)

The bill amends s. 718.110(13), F.S., to provide that condominium associations cannot amend their declaration of condominium to prohibit unit owners from renting their units or altering the duration of the rental term or the number of times unit owners are entitled to rent their units during a specified period. Current law references "restricting" unit rentals instead of "prohibiting" unit rentals and references "owner's rights related to the rental of units" instead of the more specific types of prohibited restrictions referenced in the bill.

The bill creates s. 718.110(14), F.S., to provide that, except for those portions of the common elements designed and intended to be used by all unit owners, a portion of the common elements serving only one unit or a group of units may be reclassified as a limited common element upon the vote required to amend the condominium declaration. This provision is a clarification of existing law.

Condominium Insurance (Sections 5 and 9)

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, 2010, 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 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 maximum amount of any unit owner's loss assessment coverage for any one loss is limited to an amount equal to the unit owner's loss assessment coverage limit in effect one day before the date of the occurrence. Any changes to those limits for loss assessments made on or after the day before the date of the occurrence do not apply to the loss. Regardless of the number of assessments, an insurer providing loss assessment coverage to a unit owner is not required to pay more than an amount equal to the unit owner's loss assessment coverage limit as a result of the same direct loss to property.

The bill requires every property insurance policy issued or renewed to an individual unit owner to 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.

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.[76] Casualty insurance[77] refers to liability insurance and is not the appropriate

[76] 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.

term to be used in this context, and hazard insurance is not a usual or customary term under the Insurance 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.

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

The bill clarifies, in s. 718.111(11)(f)3., F.S., 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) is located within the boundaries of the unit and serve only such unit. The bill further 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 must conform to the requirements of s. 627.714, F.S., created in the bill. 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

[77] Casualty insurance is defined under s. 624.605, F.S.

by the association and such costs may be collected as assessments under s. 718.116, F.S.;[78] 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.

Condominium Association Records (Section 9)

The bill amends s. 718.111(12)(a)11. and (12)(c), F.S., relating to accounting records and official records, respectively, to clarify that a person who knowingly or intentionally defaces or destroys accounting or official records required to be created or maintained for a required period as provided in ch. 718, F.S., or who knowingly or intentionally fails to create or maintain accounting records as required with the intent of causing harm to the association or one or more of its members is subject to a civil penalty as provided in s. 718.501(1)(d)6., F.S.

The bill amends s. 718.112(12)(b), F.S., to provide that the association is not responsible for the use or misuse of the information provided pursuant to the compliance requirements of ch. 718, F.S, unless the association has an affirmative duty not to disclose the information.

The bill also amends s. 718.111(12)(c), F.S., to add the following additional information to the list of information that is not accessible to unit owners:

- Disciplinary, health, insurance, and personnel records of the association's employees;
- Email addresses, telephone numbers, emergency contact information, and any addresses of a unit owner that are not provided to fulfill the association's notice requirements;
- Electronic security measures used to safeguard data, including passwords; and
- Software and operating systems used by the association to allow manipulation of data.

The bill permits access to the following personal identifying information: the person's name, lot or unit designation, mailing address, property address, and other contact information.

Financial Reporting (Section 9)

The bill amends s. 718.111(13), F.S., to require that association rules must include a standard for presenting a summary of association reserves that includes, but is not limited to, a good faith estimate disclosing the annual amount of reserves necessary for the association to fully fund the reserves for each reserve item that is based on the straight-line accounting method. The disclosure does not apply to reserves funded via the pooling method.

The bill deletes provisions requiring that the rules include a uniform accounting principle and standard for stating the disclosure of at least a summary of the reserves, including information as to whether the reserves are funded at a level sufficient to prevent the need for a special assessment, and if not, the amount necessary to bring reserves up to a level that will avoid a special assessment, and that the person preparing the financial reports is entitled to rely on an

[78] 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.

inspection report prepared for or by the association to meet the fiscal and fiduciary standards of ch. 718, F.S.

The bill requires that an association with less than 75 units, regardless of annual revenue, must prepare a report of cash receipt and expenditures instead of financial statements. This is an increase in the minimum number of units under current law. Under current law, associations with less than 50 units must prepare a report of cash receipt and expenditures instead of financial statements.

Certificate of Compliance (Section 10)

A provision must be included in the bylaws requiring that a certificate of compliance from a licensed electrical contractor or electrician may be accepted as evidence that the condominium units are in compliance with the applicable fire and life safety code. An association or condominium is not obligated to retrofit the common areas or association-owned property of a residential condominium with a fire sprinkler system if the unit owners have voted to forego such retrofitting by a two-thirds vote of all voting interests. This bill removes the provision prohibiting a condominium association from retrofitting a fire sprinkler system of the common areas in a high rise building defined as greater than 75 feet. If there has been a previous vote to forego retrofitting, a special meeting of the unit owners may be called by petition of at least 10 percent of the unit owners to consider requiring retrofitting. Such vote may be called only once every three years.

The bill authorizes an association to opt out of the requirement of s. 553.509(2), F.S., relating to provisions for alternate emergency power for high rise building elevators by a majority affirmative vote of the voting interests of the affected condominium.

Bylaws – Board Members (Section 10)

The bill amends s. 718.112(2)(d)1., F.S., to exempt timeshare condominiums from the requirement that the terms of all members of the board expire at the annual meeting.
The bill amends s. 718.112(2)(d)1., F.S., to provide that board members whose terms have expired become automatically eligible for reappointment and need not stand for reelection if the number of board members whose terms have expired exceeds the number of eligible members showing interest in or demonstrating an intention to run for the vacant positions. Current law provides for automatic reappointment to the board.

The bill provides an exception to the prohibition against co-owners of a unit serving on the board at the same time. The bill would permit co-owners who own more than one unit to serve on the board at the same time. Co-owners may also serve at the same time if there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. It also exempts condominium associations that include timeshare units or timeshare interests from the prohibition against co-owners of a unit simultaneously serving on the board 40 days before a scheduled election.

The bill provides that persons who are delinquent in the payment of a fine or special or regular assessment are not eligible for board membership. Current law only disqualifies persons from board membership who are delinquent in the payment of a fee or assessment.

The bill also amends s. 718.112(2)(d)3., F.S., to delete the requirement for a pre-election certification by candidates to the condominium board. It requires candidates for the board to give a written notice to the association of his or her intent to be a candidate.

The bill creates s. 718.112(2)(d)3.b., F.S., to provide a post-election certification requirement for newly elected board members. Within 90 days of being elected or appointed, a new board member must certify that he or she:

- Has read the declaration of condominium for all condominiums operated by the association and the association's articles of incorporation, bylaws, and rules and regulations;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider. This course must have been completed within one year before the 90-day deadline.

The bill provides that a board member is automatically disqualified from service on the board if he or she fails to timely file the written certification or educational certificate. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a director's election or appointment. The bill also provides that the validity of any appropriate action is not affected by the association's failure to have the certification on file.

The bill further amends s. 718.112(2), F.S., as follows:

- Paragraph (n) is amended to add nonpayment of any monetary obligation due the association to the list of criteria for which a director or an officer may be deemed to have abandoned office when such director or officer is more than 90 days delinquent in the payment of the fee, fine, or special assessment; and
- Paragraph (o), which provides that a director or officer who is charged with a felony theft or embezzlement offense involving the association's funds or property must be removed from office, is amended to clarify that the removal is effective until the end of the period of suspension or the end of the director or officer's term of office. The bill also clarifies that the charge of a felony is by information or indictment.

Fire Sprinkler Systems (Section 10)

The bill provides that unit owners must vote to forego retrofitting and engineered lifesafety system by the affirmative vote of a majority of all voting interests in the affected condominium rather than a two-thirds vote as required under current law. The bill also provides that, by

December 31, 2016, an association that is not in compliance with the requirements for a fire sprinkler system or other form of engineered lifesafety system and has not voted to forego retrofitting of the system must submit an application for a building permit for the required installation with the local government demonstrating that the association will become compliant by December 31, 2019.

Common Expenses and Common Surplus (Section 11)

The bill amends s. 718.115(1)(d)1., F.S., to provide that communication services, as defined in ch. 202, F.S.,[79] information services, or Internet services are included in the scope of the types of bulk contracts which are a common expense. References to a master antenna television system or duly franchised cable television services are deleted. Under the bill, a bulk contract for such services would not be deemed a common expense as provided under current law. Current law requires that, as a common expense, such service costs would be allocated on a per-unit basis. The bill provides associations with the discretion to allocate costs of a bulk-rate contract on a per-unit basis or a as a percentage of basis. The bill provides that a contract made by the board on or after July 1, 1998, may be cancelled by a majority of the voting interests present.

The bill also amends s. 718.115(1)(d)2., F.S., to clarify that cable or video service are the types of common expense services that may be discontinued by a hearing impaired or legally blind person, or by a person receiving supplemental security income or food stamps, without incurring a common expense charge, and adds video services in place of the current term "television" in regards to the type of expense, including cable, that must be shared equally by all participating unit owners if fewer than all unit owners share the expense. The bill also permits the association to make an assessment for video, as well as cable services.

Condominium – Assessments and Foreclosures (Section 12)

The bill amends s. 718.116(1)(b), F.S., to require a foreclosing lender to pay up to 12 months of delinquent assessments rather than 6 months of assessments as allowed under current law. The bill also amends the provision in s. 718.116(5)(b), F.S., that the claim of lien shall secure all unpaid assessments that accrue after the recording of the claim of lien and before the entry of a certificate of tile. The bill replaces the term "certificate of title" with "final judgment" because, in a foreclosure action on a lien, the title is transferred through a final judgment and not through the entry of a certificate of title.

Condominiums – Assessment Payments by Tenants (Section 12)

The bill creates s. 718.116(11), F.S., to authorize the association to demand payment of any future monetary obligation from the tenant of a unit owner if the unit owner is delinquent in payment. The association must mail written notice of such action to the unit owner. The tenant is obligated to make such payments. These provisions are identical to the provisions in ss. 719.108(10) and 720.3085(8), F.S., for tenants in cooperative associations and homeowners' associations, respectively.

[79] Chapter 202, F.S., is the Communications Services Tax Simplification Law.

The bill does not require that the tenant pay any unpaid past monetary obligations of the unit owner. The tenant is required to pay monetary obligations to the association until the tenant is released by the association or by the terms of the lease, and is liable for increases in the monetary obligations only if given a notice of the increase not less than 10 days before the date the rent is due.

If the tenant has prepaid rent to the unit owner before the receipt of the association's demand for payment, and the tenant provides written evidence of the prepaid rent to the association within 14 days of receipt of the written demand, then the tenant must make all accruing rent payments thereafter to the association. The tenant will receive credit for the prepaid rent for the applicable period, and those payments, and those payments will be credited against the monetary obligations of the unit owner to the association. A tenant who responds in good faith to a written demand from an association shall be immune from any claim from the unit owner. It is unclear to what extent "claims" are precluded by the immunity afforded in this provision. For example, if the tenant pays the obligation and subtracts that amount from the rent owed to the unit owner, the unit owner could be precluded from recovering in a "breach of lease" claim.

The landlord and unit owner must provide the tenant a credit against rent payments to the unit owner in the amount of monetary obligations paid to the association. The tenant's liability to the association may not exceed the amount due from the tenant to his or her landlord. If a tenant fails to pay, the association may act as a landlord to evict the tenant under the procedures in ch. 83, F.S. However, the bill expressly provides that the association is not otherwise considered a landlord under ch. 83, F.S., and does not have the duty to maintain the premises as required by s. 83.56, F.S. The tenant's payments do not give the tenant voting rights or the right to examine the books and records of the association. If a court appoints a receiver, the effects of s. 718.116(11), F.S., may be superseded.

Termination of Condominium (Section 13)

The bill amends s. 718.117(2)(a)1., F.S., relating to termination of condominiums because of economic waste or impossibility, to clarify the criteria for economic distress and the ability to recreate a condominium on the property. Under current law, a condominium may be terminated if the estimated cost of repairs needed to restore the condominium to its former condition and compliance with applicable laws and regulations exceed the market value of all the units in the condominium after the repairs. The bill includes costs of construction. This would permit the condominium to be terminated while still in its initial construction phase.

The bill also amends s. 718.117(19), F.S., relating to the creation of another condominium after the termination of a condominium, to replace the term "creation" with the term "filing of a declaration of condominium or an amended and restated declaration of condominium," which is a more specific description of how a new condominium is created after a termination.

Escrow Accounts for Condominium Projects (Section 14)

The bill clarifies the Division of Florida Condominiums, Timeshares, and Mobile Homes' (division) policy requiring separate accounting for escrow deposits in new condominium projects. More specifically, the bill provides that all payments in excess of the 10 percent of the

sale price received prior to the completion of construction may be held in one or more escrow accounts by the escrow agent. If only one escrow account is used, the escrow agent must maintain separate accounting records for each purchaser and for amount separately covered, and if applicable, released to the developer under s. 718.202(3), F.S. The bill provides that separate accounting by the escrow agent of the escrow funds constitutes compliance with the law even if the funds are held by the escrow agent in a single escrow account. The purpose of this provision is to clarify existing law.

Condominium – Transfer of Association Control (Section 15)

The bill amends s. 718.301(1)(f), F.S., to provide that unit owners other than the developer are entitled to elect not less than a majority of the members of the association board except when a court determines within 30 days after appointment of a receiver for the developer that transfer of control to the owners would be detrimental to the association or its members.

Condominium – Sanctioning Unit Owners (Section 16)

The bill amends s. 718.303(3), F.S., to authorize condominium associations to suspend a unit owner's use rights if the unit owner is delinquent for more than 90 days in the payment of a monetary obligation to the association. The suspension may be, for a reasonable period of time, for the right of a unit owner or a unit's occupant, licensee, or invitee, to use common elements, common facilities, or any other association property. The association cannot suspend the right to use limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators. The declaration of condominium or the bylaws of the association must authorize the suspension. Before a suspension or fine is imposed, notice and an opportunity for a hearing must be provided.

This provision could be interpreted to conflict with s. 718.106(4), F.S., which grants a tenant all use rights in the association property and those common elements otherwise readily available for use generally by the unit owners.

The bill provides that suspensions may not be imposed by an association unless it first gives at least 14-days notice and a opportunity for a hearing to the unit owner or occupant, if applicable. Current law only provides a reasonable notice requirement before imposition of a fine and does not reference unit occupants. The bill also authorizes associations to provide in their bylaws or declaration of condominium that a unit owner's voting rights may be suspended due to nonpayment of assessments, fines, or other charges payable to the association which are delinquent in excess of 90 days. The suspension shall end when the payment due or overdue to the association is paid in full.

The suspension of voting rights could be read to conflict with s. 718.106(2)(d), which provides that membership in the association, with full voting rights, passes with a unit as appurtenances thereto.

Condominium – Bulk Buyers and Assignees (Sections 7, 17, and 18)

The bill creates part VII of ch. 718, F.S., consisting of ss. 718.701, 718.702, 718.703, 718.704, 718.705, 718.706, 718.707, and 718.708, F.S. Section 718.701, F.S., provides that part VII of ch. 718, F.S., may be cited as the "Distressed Condominium Relief Act."

The bill creates s. 718.702, F.S., to provide legislative findings and legislative intent. It provides the legislative finding that potential successor purchasers of condominium units are unwilling to accept the risk of purchase because the potential liabilities inherited from the original developer are imputed to the successor purchaser, including the foreclosing mortgagee. The bill provides the statement of legislative intent that it is the public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums.

The bill amends s. 718.501(1), F.S., to include bulk assignees and bulk buyers within the division jurisdiction to investigate complaints and enforce compliance with the provisions of ch. 718, F.S. It also includes bulk assignees and bulk buyers within the division's authority to investigate complaints regarding turnover of control from a bulk buyer or bulk assignee-controlled association to a unit owner-controlled association.

Definitions

In order to incorporate the creation of the bulk buyer provision in part VII of ch. 718, F.S., the bill revises the definition of "developer" in s. 718.103(16), F.S., to include bulk assignees and bulk buyers.

The bill creates s. 718.703, F.S., to define "bulk assignee" as a person who acquires more than seven condominium parcels as provided in s. 718.707, F.S., and receives an assignment of some or substantially all of the rights of the developer as an exhibit in the deed or as a separate instrument recorded in the public records in the county where the condominium is located.

It also defines "bulk buyer" as a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of developer rights other than the right to:

- Conduct sales, leasing, and marketing activities within the condominium;
- Be exempt from making working capital contributions that arise out of or in connection with the bulk buyer's acquisition of a bulk number of units; and
- Be exempt from any rights of first refusal which may be held by the association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to any third-party purchaser concerning one or more units.

Assignment and Assumption of Developer Rights

The bill creates s. 718.704, F.S., relating to the assignment and assumption of developer rights, to provide that a bulk assignee assumes all the duties and responsibilities of the developer. The bulk assignee is not liable for:

- The warranties of a developer under s. 718.203(1) or 718.618, F.S.; however, the bulk assignee would assume the warranties for design, construction, development, or repair work performed by or on behalf of the bulk assignee;
- The obligation to fund converter reserves for a unit not acquired by the bulk assignee;
- The obligation to provide converter warranties on any portion of the condo property except as provided in a contract for sale between the assignee and a new purchaser;
- Provide the condo association with a cumulative audit of the association's finances from the date of formation, except for the period that the bulk assignee elects a majority of the board; and
- The developer's failure to fund previous assessments or resolve budget deficits, but the bulk assignee must provide an audit for the period in which the assignee elects a majority of the board members, except when the bulk assignee receives the assignment of rights of the developer to guarantee assessment levels and fund budget deficits.

The bulk assignee is responsible for delivering documents and materials as required by s. 718.705(3), F.S., which the bill creates to require the bulk assignee to comply with the nondeveloper disclosures in s. 718.503(2), F.S., before offering any units for sale or lease for a term exceeding five years.

A bulk assignee that does not receive an assignment of the right of the developer to guarantee the level of assessments and fund budgetary deficits or a bulk buyer is not liable for the obligations of the developer with respect to the guarantee. However, the bulk assignee or bulk buyer is responsible for payment of assessments in the same manner as all other owners of condominium parcels. If the bulk assignee or bulk buyer does guarantee the level of assessments, then he or she is responsible for all of the developer's obligations in respect to the guarantee.

An acquirer of condominium parcels is not considered a bulk assignee or a bulk buyer if the transfer of parcels was done to hinder, delay, or defraud any purchaser, unit owner, or the association, or if the acquiring person or entity is considered an insider for purposes of fraudulent transfers under s. 726.102(7), F.S. Requiring proof of intent to hinder, delay, or defraud may increase the complexity and uncertainty in litigating this issue.

Developer rights may be assigned to a bulk assignee by the developer, by a previous bulk assignee, or by a court of competent jurisdiction acting on behalf of the developer or previous bulk assignee. The bill provides the following limitations on the assignment of developer rights:

- There may be more than one bulk buyer but not more than one bulk assignee within a condominium at any particular time; and
- If more than one acquirer of condominium parcels receives an assignment of development rights from the same person, the bulk assignee is the acquirer who first records the assignment in the applicable public records.

Transfer to Unit Owner-Controlled Board

The bill creates s. 718.705, F.S., to provide for the transfer of control of the condominium board of administration to the unit owners other than the developer, if a bulk owner is entitled to elect a

majority of the board members. The bill provides that the condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a buyer, or to be owned by anyone other than the developer, until the parcel is conveyed to a buyer who is not the bulk assignee.

The bill provides that all items required under s. 718.301(4), F.S.,[80] must be delivered by the bulk assignee to the board of administration.
If the bulk assignee is not in possession of these documents and materials during the period in which the assignee owned the majority of the condominium parcels, the assignee must undertake a good faith effort to obtain and deliver the documents and materials,[81] and must certify in writing to the association an itemized list of documents and materials that could not be obtained by the assignee. The delivery of the certified list relieves the bulk assignee of all responsibility to deliver such documents and materials.

In a conflict between the provisions of s. 718.705, F.S., and s. 718.301, F.S., the provisions of s. 718.705, F.S., prevail.

If a bulk assignee or a bulk buyer fails to comply with the provisions of part VII of ch. 718, F.S., all protections and exemptions provided in that part are lost.

Sale or Lease of Units by a Bulk Assignee or a Bulk Buyer

The bill creates s. 718.706, F.S., relating to the sale or lease of units by a bulk assignee or a bulk buyer. It provides that, prior to the sale or lease of units for a term of more than five years, a bulk assignee or a bulk buyer must file the following documents with the Division of Florida Condominiums, Timeshares and Mobile Homes in the Department of Business and Professional Regulation and provide the documents to a prospective purchaser or tenant:

- Updated prospectus, offering circular, or a supplement, which must include the form of contract for purchase and sale in s. 718.503(1), F.S.;
- Updated Frequently Asked Questions and Answers sheet;
- Executed escrow agreement if required under s. 718.202, F.S., relating to sales or reservation deposits prior to closing; and
- Financial information required under s. 718.111(13), F.S. (association financial report for preceding fiscal year), unless the report does not exist for the fiscal year before the acquisition by the bulk assignee or the accounting records cannot be obtained in good faith, in which case notice requirements must be met.[82]

[80] Section 718.301(4), F.S., sets forth the documents that the developer must transfer to the association after the unit owners elect the majority of the board. These records include, but are not limited to, the recorded condominium declaration and all amendments, a certified copy of the association's articles of incorporation, bylaws, minutes, financial records, association funds or control of such funds, association tangible personal property, plans and specifications used in the construction of the condominium, insurance contracts, and a common elements turnover inspection report under seal of a state licensed architect or engineer.
[81] It may be difficult to establish in litigation that the assignee did not make a "good faith effort" to obtain and deliver the documents. In the insurance context, the Department of Business and Professional Regulation reports that it has been overruled in its attempt to enforce "best efforts." *See DBPR v. Waterfront*, Case No. 09-1232 (Fla. DOAH 2009).
[82] The bulk assignee or bulk buyer must include a specific, conspicuous statement advising that financial information for the preceding year is not available or cannot be created because of insufficient accounting records of the association. It may be difficult to establish in litigation that the buyer did not act in "good faith" in attempting to obtain the accounting records.

Prior to the sale or lease of units for a term of more than five years, a bulk assignee must provide to the prospective purchaser and file with the Division of Florida Condominiums, Timeshares, and Mobile Homes in the Department of Business and Professional Regulation, a disclosure statement that includes, but is not limited to, the following:

- A description of any rights of the developer assigned to the bulk assignee or bulk buyer;
- A statement relating to the seller's limited liability for warranties of the developer; and
- If the condominium is subject to conversion, a statement relating to the seller's limited obligation to fund converter reserves or to provide converter warranties under s. 718.618, F.S., relating to converter reserve accounts.

Prior to the sale or lease of a unit for a term of more than five years, the bulk assignee or bulk buyer must comply with the nondeveloper disclosure requirements of s. 718.503(2), F.S., relating to disclosures by unit owners prior to the sale of a unit.

The bill prohibits the waiver of reserves or reduction of reserve funding and the use of reserve expenditures for other purposes unless approved by a majority of the voting interests not under the control of the developer, the bulk assignee, and the bulk buyer. A bulk assignee in control of the association board of administration must comply with the requirements imposed on developers to transfer control of the association as required under s 718.301, F.S.
A bulk assignee or a bulk buyer must comply with the requirements of s. 718.301, F.S., regarding contracts entered into by the association during the period the assignee or buyer maintains control of the association's board of administration. In addition, unit owners must be afforded all of the protections contained in s. 718.302, F.S., regarding certain agreements.

A bulk buyer must comply with the requirements of the declaration regarding the transfer of any unit by sale, lease, or sublease. No exemptions afforded to a developer regarding the sale, lease, sublease, or transfer of a unit are afforded to a bulk buyer.

Time Limitations

The bill creates s. 718.707, F.S., to provide a time limitation for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the parcels were acquired prior to July 1, 2011. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

Liabilities of Developers and Others

The bill creates s. 718.708, F.S., to provide that an assignment of developer rights does not release the original developer from any liabilities under the condominium declaration or ch. 718, F.S. The original developer's liability is not limited for claims brought by unit owners, bulk assignees, or bulk buyers for violations of ch. 718, F.S., unless specifically excluded.

The bill provides that nothing in the act waives, releases, compromises, or limits the liability established under ch. 718, F.S., except as provided in part VII, created by the bill.

Cooperatives – Board Vacancies (Section 19)

The bill creates subparagraph 6. of s. 719.106(1)(d), F.S., to provide a process for the filling of vacancies on the board of a cooperative. Unless otherwise provided in the bylaws of the cooperative, any vacancy that occurs on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors. The remaining directors may vote to fill the vacancy even if they constitute less than a quorum or there is only one remaining director. As an alternative, the board may hold an election to fill the vacancy. Unless otherwise provided in the bylaws, a board member appointed or elected to fill a vacancy would serve the unexpired term of the seat being filled. Filling vacancies that are created by recall would remain governed by the recall provisions in s. 719.106(1)(f), F.S.

Compliance with Fire and Life Safety Code (Section 20)

A provision must be included in the bylaws requiring that a certificate of compliance from a licensed electrical contractor or electrician may be accepted as evidence that the cooperative units are in compliance with the applicable fire and life safety code. A cooperative or unit owner is not obligated to retrofit the common areas or cooperative-owned property of a residential cooperative with a fire sprinkler system if the unit owners have voted to forego such retrofitting by a two-thirds vote of all voting interests.

This bill removes the provision prohibiting a cooperative from retrofitting a fire sprinkler system of the common areas in a high rise building defined as greater than 75 feet. If there has been a previous vote to forego retrofitting, a special meeting of the unit owners may be called by petition of at least 10 percent of the unit owners to consider requiring retrofitting. Such vote may be called only once every three years. Notice must be given as required for any regularly called meeting of the unit owners, and the notice must state the purpose of the meeting. The bill provides that electronic transmission may not be used to provide notice of a meeting called for this purpose.

Cooperatives – Assessments and Foreclosures (Section 21)

The bill amends s. 719.108(3), F.S., to authorize the association to file a lien for authorized administrative late fees and reasonable collection costs for which the association has contracted.

The bill provides that a lien may not be filed by the association until 30 days after a notice of intent to file the lien was sent certified mail, return receipt requested and by first-class mail to the last address in the records of the association.

The bill creates subsection (10) in s. 719.108, F.S., to provide for the payment of unpaid regular assessments by the tenant of a unit owner in a cooperative association. These provisions are identical to the provisions in ss. 718.116(11) and 720.3085, F.S., for tenants in condominium associations and homeowners' associations, respectively. The cooperative association is authorized to demand payment of any future monetary obligation from the tenant of a unit owner if the unit owner is delinquent in payment. The tenant is obligated to make such payments. However, the tenant is not required to pay any unpaid past assessments.

If the tenant has prepaid rent to the unit owner before to the receipt of the associations demand for payment and the tenant provides written evidence of the prepaid rent to the association within 14 days of receipt of the written demand, then the tenant must make all accruing rent payments thereafter to the association. The tenant will receive a credit for the prepaid rent for the applicable period, and those payments will be credited against the monetary obligations of the unit owner to the association. A tenant who responds in good faith to a written demand from an association shall be immune from any claim from the unit owner.

The bill does not require that the tenant pay any unpaid past monetary obligations of the unit owner. The tenant is required to pay monetary obligations to the association until the tenant is released by the association or by the terms of the lease, and is liable for increases in the monetary obligations only if given a notice of the increase not less than 10 days before the date the rent is due. The landlord and unit owner must provide the tenant a credit against rent payments to the unit owner in the amount of monetary obligations paid to the association. The tenant's liability to the association may not exceed the amount due from the tenant to his or her landlord. If a tenant fails to pay, the association may act as a landlord to evict the tenant under the procedures in ch. 83, F.S. However, the association will not otherwise be considered a landlord under ch. 83, F.S. The tenant's payments do not give the tenant voting rights or the right to examine the books and records of the association. A court may supersede these provisions by appointing a receiver.

Homeowners' Associations Board Meetings (Section 22)

The bill amends s. 720.303(2)(b), F.S., to provide that meetings between the board or a committee and the association's attorney in which proposed or pending litigation is discussed are exempt from the open meetings requirement in s. 720.303(2)(b), F.S.

Homeowners' Associations – Inspection and Copying of Records (Section 22)

The bill amends s. 720.303(5)(a), F.S., which creates a rebuttable presumption that the association has willfully failed to comply with a member's written request to inspect its records if the association does not provide the member access to the records within ten days of the request. The bill provides that the member's request must be submitted by certified mail, return receipt requested.

The bill also amends s. 720.303(5)(c), F.S., which authorizes the association to charge the member for the actual cost of copying records, to provide that the actual cost of copying records includes reasonable costs involving personnel fees and charges at an hourly rate for employee time to cover the administrative costs to the association. The copies may be made by the management company.

Regarding records that are protected by the attorney-client privilege and that was prepared exclusively for civil or criminal litigation, the bill amends s. 720.303(5)(c)1., F.S., to provide that the protection lasts until the conclusion of the litigation or administrative proceedings. It deletes the reference to "adversarial" administrative proceedings.

The bill also amends s. 720.303(5)(c)1., F.S., to expand the list of official documents of the homeowners' association that are not accessible to members to also include:

- Payroll records of the association's employees. but not limited to disciplinary, payroll, health, and insurance records;
- Medical records of parcel owners or community residents;
- Social security numbers, driver's license numbers, credit card numbers, electronic mailing addresses, telephone numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, and property address;
- Any electronic security measure that is used by the association to safeguard data, including passwords; and
- The software and operating system used by the association which allows the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

This conforms to the official records of a condominium association that would not be available for inspection by condominium unit owners under s. 718.111(12)(c), F.S., as that provision is amended by this bill.

Homeowners' Associations – Budgets (Section 22)

The bill amends s. 720.303(6)(b), F.S., to permit the termination of reserve accounts upon the approval of the majority of the voting interests.[83] The reserve account must be removed from the budget upon approval of the termination.

The bill amends s. 720.303(6)(c)1., F.S., to revise the notice requirement for financial reports for associations that do not provide for reserve accounts. The revised notice would clarify that the vote to provide a reserve account is attained by vote of the members at a meeting or by written consent. The bill maintains the current provision that the vote to provide for reserve account requires approval of not less than a majority of the total voting interests of the association.

The bill creates s. 720.303(6)(c)2., F.S., to provide an additional disclosure for financial reports for reserve accounts that are created or established pursuant to s. 720.303(6)(d), F.S., which requires the approval of the majority of the association members at a duly called meeting of the members or by written consent. The notice states that reserve funds are not subject to the restrictions on use of such funds in s. 720.303(6), F.S., and are not calculated in accordance with that statute because the owners have not elected to provide for reserve accounts pursuant to the provisions of s. 720.303(6), F.S.

The bill amends s. 720.303(6)(g)2., F.S., to revise the accounting requirements for pooled reserve accounts. It permits the association to include accounts receivable minus the allowance for doubtful accounts in the reserve account's projected annual cash inflows. Current law only permits the association to include estimated earnings from investment of principal in the reserve account's projected annual cash inflows.

[83] Section 720.301(13), F.S., defines "voting interest" to mean "the voting rights distributed to the members of the homeowners' association, pursuant to the governing documents."

Homeowners' Associations – Compensation (Section 22)

The bill creates s. 720.303(12), F.S., to provide that a director, officer or committee member may not receive any salary or compensation from the association for the performance of his or her duties and may not benefit in any other way financially from service to the association. The bill provides that this does not prohibit:

- Participation in a financial benefit accruing to all or a significant number of members as a result of lawful actions taken by the board including in part maintenance or repair of community assets;
- Reimbursement for out-of-pocket expenses subject to approval in accordance with procedures established by the governing documents;
- Recovery of insurance proceeds from a policy maintained by the association for the benefit of its members; or
- The developer or its representative from serving as director, officer, or committee member of the association and benefiting financially from service to the association.

Homeowners' Associations – Display of Flag (Section 23)

The bill amends s. 720.304(2)(b), F.S., regarding flagpoles in homeowners' associations, to provide that flagpoles are subject to all building codes, zoning setbacks, and other applicable government regulations. The other applicable government regulations include, but are not limited to, noise and lighting ordinances.

Homeowners' Associations – Sanctioning Parcel Owners (Section 24)

The bill amends s. 720.305(2), F.S., to authorize homeowners' associations to suspend a unit owner's use rights until the unit owner's monetary obligation to the association is paid if the unit owner is delinquent for more than 90 days. The suspension of the parcel owner's right to use association property does not apply to common areas that provide access or utility services to the parcel. Any fine or suspension must be imposed at a properly noticed board meeting. The owner, and, if applicable, the owner's occupant, licensee, or invitee must be notified of the fine or suspension by mail or hand delivery.

The bill provides that a fine of less than $1,000 may not become a lien against a parcel. Current law prohibits any fine to become a lien on a parcel. If the association imposes a fine or suspension, the association must provide written notice by mail or hand delivery to the parcel owner or, in some instances, any tenant, licensee, or invitee of the parcel owner.

Homeowners' Associations – Proxy Voting (Section 25)

The bill amends s. 720.306(8), F.S., to provide that, if secret ballots are required under the governing documents, an absentee ballot must be enclosed inside a blank envelope and placed inside another envelope with the required information and signature on the outer envelope. Once the eligibility to vote is verified, but before the ballots are counted, the blank envelope must be removed and added to the ballots of members voting in person or by proxy. The bill also

provides that absentee ballots must be hand delivered or mailed to the place specified in the notice no later than on the date specified in the notice.

Homeowners' Associations – Elections and Board Vacancies (Section 25)

The bill amends s. 720.306(9), F.S., to allow a member to nominate himself or herself if the election process allows voting by absentee ballot and the nomination occurs in advance of the balloting.

The bill also provides a process for the filling of vacancies on the board of an homeowners' association. Unless otherwise provided in the bylaws of the association, any vacancy that occurs on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors. The remaining directors may vote to fill the vacancy even if they constitute less than a quorum or there is only one remaining director. Alternative, the board may hold an election to fill the vacancy. Unless otherwise provided in the bylaws, a board member appointed or elected to fill a vacancy, would serve the unexpired term of the seat being filled. Filling vacancies that are created by recall would remain governed by the recall provisions in s. 720.303(10), F.S., and rules adopted by the division.

Homeowners' Associations – Assessments and Foreclosures (Sections 26)

The bill creates s. 720.3085(8), F.S., to authorize the association to demand payment of any future monetary obligation from the tenant of a unit owner if the unit owner is delinquent in payment. The tenant is obligated to make such payments.

Section 720.3085(8), F.S., provides that the tenant is not required to pay any unpaid past monetary obligations of the unit owner. The tenant is required to pay monetary obligations to the association until the tenant is released by the association or by the terms of the lease, and is liable for increases in the monetary obligations only if given a notice of the increase not less than 10 days before the date the rent is due.

If the tenant has prepaid rent to the unit owner before to the receipt of the associations demand for payment and the tenant provides written evidence of the prepaid rent to the association within 14 days of receipt of the written demand, then the tenant must make all accruing rent payment thereafter to the association. The tenant will receive credit for the prepaid rent for the applicable period, and those payments would be credited against the monetary obligations of the unit owner to the association. A tenant who responds in good faith to a written demand from an association shall be immune from any claim from the unit owner.

The landlord and unit owner must provide the tenant a credit against rent payments to the unit owner in the amount of monetary obligations paid to the association. The tenant's liability to the association may not exceed the amount due from the tenant to his or her landlord. If a tenant fails to pay the association may act as a landlord to evict the tenant under the procedures in ch. 83, F.S. However, the association is not otherwise considered a landlord under ch. 83, F.S. The tenant's payments do not give the tenant voting rights or the right to examine the books and records of the association.

If a court appoints a receiver, the effects of s. 720.3085(8), F.S., may be superseded.

These provisions are identical to the provisions in ss. 718.116(11) and 719.108(10), F.S., for tenants in condominium associations and cooperative associations, respectively.

Homeowners' Associations – Recreational Leaseholds (Section 27)

The bill creates s. 720.31(6), F.S., to permit homeowners' associations to acquire leaseholds, memberships, or other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities. The land or facility being acquired does not have to be land or facilities contiguous to the association property, or provide enjoyment, recreation, or other uses or benefits to the owners.

The bill requires that the leaseholds, memberships, or other possessory interest must be stated and fully described in the declaration of the association if the association is created or exists at the time the declaration is recorded. Once the declaration is recorded, agreements to acquire leaseholds, memberships, or other possessory or use interests not entered into within 12 months following the recording of the declaration may be entered into only if authorized by the declaration for material alterations or substantial additions to the common areas or association property. If the declaration does not provide for such material alterations or additions, the approval of 75 percent of the total voting interests is required.

The declaration of material alterations or substantial additions may provide that the rental, membership fees, operations, replacements, or other expenses are common expenses; may impose covenants and restrictions concerning the use; and contain other provisions not inconsistent with the subsection. The association may join with other associations that are part of the same development or master association in the acquisition of the interest. The bill provides that subsection (6) is intended to clarify law in existence before July 1, 2010.

Special Assessments by Developer – Controlled Boards (Section 28)

The bill creates s. 720.315, F.S., to revise requirements for special assessments in homeowners' associations before the turnover of the association by the developer. The developer-controlled board may not levy a special assessment unless the majority of nondeveloper parcel owners approve of the special assessment at a duly called special meeting of the membership at which a quorum is present.

Effective Date (Section 29)

The bill provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The provisions in the bill allowing associations to demand rent from a tenant could be challenged as an unconstitutional impairment of contract if an association demands rent from a tenant who entered into the lease prior to the effective date of the bill.

Article I, section 10 of the Florida Constitution and the United States Constitution precludes the enactment of any law impairing the obligation of contracts. The first inquiry in an impairment of contract analysis is whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.[84] "The severity of the impairment measures the height of the hurdle the state legislation must clear."[85] Utilizing this analysis, some courts have recognized that a statute may be declared unconstitutional as an impairment of a tenant's lease or contract when the statute requires payment under a lease executed prior to the enactment of the provision.[86]

The provisions in the bill allowing associations to demand rent from tenants appears to apply prospectively and there is no expression of the Legislature's intent to apply the provision to leases already in existence. However, if challenged, the constitutionality of the provision will likely turn on a determination of the extent and severity of the impairment of the tenant's rights under the lease.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Condominium unit owners should benefit under the bill's provisions by not being required 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.

[84] *Pomponio v. Claridge of Pompano Condominium*, 378 So. 2d 774, 779 (Fla. 1979).
[85] *Id.*
[86] *Tradewinds of Pompano Ass'n, Inc. v. Rosenthal*, 407 So. 2d 976 (Fla. 4th DCA 1981) (holding that s. 718.401(4), F.S., requiring payment of rent into a court depository was unconstitutional as an impairment of lease contracts predating its enactment).

The Department of Business and Professional Regulation (department) noted that the bill should result in more bulk investors getting into the business, which should improve the financial position of condominium associations in which a significant number of units are unsold and unoccupied. The department also stated that the purchase of unsold inventory would have a positive effect on the depressed condominium market.[87]

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/CS/CS by Judiciary on April 7, 2010:
The committee substitute:

- Specifies that the maximum amount of any unit owner's loss assessment coverage that may be assessed for any loss is an amount equal to the unit owner's loss assessment coverage limit;
- Provides that any changes to the limits of a unit owner's coverage for loss assessments made on or after the day before the date of the occurrence are not applicable to the loss;
- Clarifies that, regardless of the number of assessments, an insurer is not required to pay more than an amount equal to the unit owner's loss assessment coverage limit as a result of the same direct loss to the property;
- Provides that, except for those portions of the common elements designed and intended to be used by all unit owners, a portion of the common elements serving only one unit or a group of units may be reclassified as a limited common element upon the vote required to amend the condominium declaration;
- Deletes a reference to "common areas" in the provision specifying that an association, condominium, or unit owner is not obligated to retrofit the common elements, association property, or units of a residential condominium with a fire sprinkler system;

[87] Florida Department of Business and Professional Regulation, Office of Legislative Affairs, *2010 Legislative Analysis Form*: *SB 1196* (Jan. 22, 2010).

- Provides that unit owners must vote to forego retrofitting an engineered lifesafety system by the affirmative vote of a majority (rather than two-thirds under current law) of all voting interests in the affected condominium;
- Requires an association that is not in compliance with requirements for a fire sprinkler system or other form of engineered lifesafety system and that has not voted to forego retrofitting to initiate, by December 31, 2016, an application for a building permit for the required installation with the local government demonstrating that it will become compliant by December 31, 2019;
- Requires a foreclosing lender to pay up to 12 months of delinquent assessments rather than 6 months of assessments under current law;
- Removes the provisions in the bill (ss. 718.116, 719.108, 720.3085, F.S.) providing that costs may include delinquency letters and collection efforts by a licensed management company or a licensed manager relating to a delinquent installment of an assessment incurred before filing a claim of lien that does not exceed $75;
- Provides that a tenant will receive credit for any prepaid rent for the applicable period for any rent paid to a unit owner before receiving a demand from the association in ss. 718.116, 719.108, and 720.385, F.S.;
- Creates a new provision within s. 718.202, F.S., to clarify the Division of Florida Condominiums, Timeshares, and Mobile Homes' (division) policy requiring separate accounting for escrow deposits in new condominium projects;
- Replaces references to the "creating" developer with "original" developer;
- Clarifies that a bulk assignee must file with the division and provide to a prospective purchaser a description of any rights of the developer which have been assigned to the bulk assignee *or bulk buyer*; and
- Replaces the term "share owner" with the term "unit owners" in the provision allowing an association to demand delinquent monetary obligations from a tenant;

CS/CS by Military Affairs and Domestic Security on March 17, 2010:
This CS differs from CS/SB's 1196 & 1222 as follows:

- It amends s. 399.02, F.S., to provide for a delay in the retrofit of a special access key for elevators in condominiums and cooperatives until the elevator is replaced or requires major modification;
- It removes the repeal of s. 553.509(2), F.S., relating alternate emergency power for high rise residential building elevators. The bill allows associations to opt out of the current law by an affirmative vote of the majority of the voting interests in the affected condominium;
- It amends s. 633.0215, F.S., to exempt condominium, cooperative, or multifamily residential buildings less than four stories in height with exterior corridor egress from installing a manual fire alarm system;
- It restores the audit thresholds and timing for the annual report found in s. 718.111, F.S., to current law; and
- It amends s. 718.112, F.S., to provide for a retrofit exemption to condominium associations for fire sprinkler systems in common areas of a high rise building.

The bill provides that a previous vote to forego retrofitting may only be reconsidered once every three years.

CS by Regulated Industries on March 3, 2010:
The committee substitute (CS) combines SB 1196 and SB 1222.

The CS also differs from SB 1196 as follows:

- It amends s. 617.0721, F.S., relating to voting requirements for members of the corporation;
- It amends s. 617.0808, F.S., relating to removal of directors;
- It creates s. 617.1606, F.S., providing an exception to ss. 617.1601 through 617.1605, F.S., for condominium, cooperative, and homeowners associations under chs. 718, 719, and 720, F.S., respectively;
- It amends the definition of "developer" in s. 718.103(16), F.S.;
- It amends the condominium insurance provision in s. 718.111(11), F.S.;
- It amends s s. 718.112(2)(d)1., F.S., to exempt timeshares condominium from the requirement that the terms of all members of the board expire at the annual meeting;
- It also amends s. 718.112(2)(d)1., F.S., to include timeshare units or timeshare interests from the prohibition against co-owners of a unit simultaneously serving on the board, and to reference "eligible candidates" in place of "owners";
- It amends s. 718.115(1)(d)1., F.S., to delete the term "deemed" in the context of a bulk contract being deemed a common expense. It also provides associations with the discretion to allocate costs of a bulk contract on a per-unit basis or a percentage of basis;
- It does not amend s. 718.115(1)(d)1., F.S., to provide that a unit owners-controlled association may cancel any contract made by a developer-controlled association, and that the cancellation must be made within 120 days after the unit owners elect the majority of the board;
- It amends s. 718.116(5)(b), F.S., but does not permit a fee greater than $75 for the collection management company to prepare a letter or estoppel certificate required under ch. 718, F.S. It also does not provide for the charging of a reasonable fee related to the preparation of the letter or estoppel certificate. It also references delinquency letters instead of collection letters. It amends s. 718.116(5)(b), F.S., to replace the term "certificate of title" with the term "final judgment";
- It revises the tenant foreclosure provisions for condominiums in s. 718.116(11), F.S., to reference "monetary obligations instead of "assessments". It clarifies that the notice of an increase in monetary obligations must be in writing, clarifies that notice must be made not less than 10 days before the rent is due, and clarifies the tenants obligations when the rent has been prepaid;
- It amends s. 718.117(2), F.S., relating to the termination of condominium;
- It amends s. 718.303(3), F.S., relating to the suspension of member's rights due to delinquent payment of monetary obligations to the association, to provide that the notice before the suspension is imposed must be a written notice of at least 14 days, and that the suspension ends when the delinquent obligation is paid;

- It amends s. 718.501, F.S., to include bulk assignees and bulk buyers within the division jurisdiction to investigate complaints and enforce compliance with the provisions of ch. 718, F.S.;
- It amends the definition of the term "bulk buyer" in s. 718.707(2), F.S., to include the rights to be exempt from the payment of working capital contributions to the association and from the specified rights of first refusal which may be held by the association;
- It does not include subsection (3) of s. 718.706, F.S., of the bill, which requires compliance with the nondeveloper disclosure requirements in s. 718.503(2), F.S.;
- It amends s. 719.106, F.S., relating to filling vacancies on the board of a cooperative;
- It amends s. 719.108(3), F.S., but does not permit a fee greater than $75 for the collection management company to prepare a letter or estoppel certificate required under ch. 718, F.S. It also does not provide for the charging of a reasonable fee related to the preparation of the letter or estoppel certificate. It also references delinquency letters instead of collection letters;
- It revises the tenant foreclosure provisions for cooperative associations in s. 719.108(10), F.S., to reference "monetary obligations instead of "assessments". It clarifies that the notice of an increase in monetary obligations must be in writing, clarifies that notice must be made not less than 10 days before the rent is due, and clarifies the tenants obligations when the rent has been prepaid;
- It amends s. 720.306(7), F.S., to correct a cross-reference to s. 607.0707, F.S.;
- It amends s. 720.306(9), F.S., to provide for the filling of vacancies on the board of a homeowners' association;
- It revises the tenant foreclosure provisions for homeowners' associations in s. 720.3085(8), F.S., to reference "monetary obligations instead of "assessments". It clarifies that the notice of an increase in monetary obligations must be in writing, clarifies that notice must be made not less than 10 days before the rent is due, and clarifies the tenants obligations when the rent has been prepaid;
- It amends s. 720.31(6), F.S., to provide that this subsection is intended to clarify existing law and that it applies to associations on the effective date of this act; and
- It amends s. 720.303(5)(c), F.S., to provide the following additional items to the list of information that is not accessible to unit owners:
    - Email addresses, telephone numbers, emergency contact information, and any addresses of a unit owner that are not provided to fulfill the association's notice requirements;
    - Electronic security measures used to safeguard data, including passwords; and
    - Software and operating systems used by the association which allow manipulation of data.

The CS differs from SB 1222 as follows:

- It amends s. 617.0721, F.S., relating to removal of directors;
- It amends s. 617.0808, F.S., relating to removal of directors;

- It creates s. 617.1606, F.S., providing an exception to ss. 617.1601 through 617.1605, F.S., for condominium, cooperative, and homeowners associations under chs. 718, 719, and 720, F.S., respectively;
- It amends s. 718.112(2)(d)1., F.S., to include timeshare units or timeshare interests from the prohibition against co-owners of a unit simultaneously serving on the board, and to reference "eligible candidates" in place of "owners";
- It does not amend s. 718.112(12)(l), F.S., relating to the retrofitting of condominium with fire sprinklers;
- It amends s. 718.112(12)(o), F.S., relating to director and officer offenses;
- It amends s. 718.115(1)(d)1., F.S., to delete the term "deemed" in the context of a bulk contract being deemed a common expense. It also provides associations with the discretion to allocate costs of a bulk contract on a per-unit basis or a percentage of basis;
- It amends s. 718.116, F.S., relating to claims of liens and the tenant's payment of the unit owner's monetary obligations;
- It amends s. 718.117(2), F.S., relating to the termination of condominium;
- It amends s. 718.303, F.S., relating to the suspension of member rights;
- It amends the definition of the term "bulk buyer" in s. 718.707(2), F.S., to include the rights to be exempt from the payment of working capital contributions to the association and from the specified rights of first refusal which may be held by the association;
- It does not include subsection (3) of s. 718.706, F.S., of the bill, which requires compliance with the nondeveloper disclosure requirements in s. 718.503(2), F.S.; and
- It provides an effective date of July 1, 2010, instead of taking effect upon becoming a law.

The CS also amends the following sections of the Florida Statutes as described in the analysis: 718.501, 719.106, 719.108, 720.304, 720.305, 720.306, 720.3085, 720.31, 720.303, 720.306, and 720.315.

B. Amendments:

None.