

STORAGE NAME: h1907.sgc.doc
DATE: April 19, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: HB 1907 (PCB BR 01-04)
RELATING TO: Condominiums/Election
SPONSOR(S): Committee on Business Regulation and Reps. Kyle, Gottlieb and Cantens
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION YEAS 8 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 10 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill amends various provisions in Chapter 718, F.S., relating to condominiums

Certain disputes involving condominium associations are required to be referred to non-binding arbitration before the parties may file a court action. Disputes involving condominium association elections are currently one of the types of dispute that must be referred. The condominium arbitration program is operated under the Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes. This bill provides that mandatory arbitration of controversies over condominium association election of a director of the board of administration must be resolved on an expedited basis.

Current provisions relating to the purchase and sale of a condominium unit require certain documents to be made available to the buyer. The bill removes the requirement for a nondeveloper unit owner to provide a question and answer sheet as a part of the transaction documents.

The bill further addresses changes to the condominium statutes as amended by chapter 2000-302, LOF, to allow the right to transfer appurtenances, such as a garage, to another condominium unit owner. The bill amends several sections to state that certain procedural changes are intended to apply to associations existing on the effective date of the changes.

This bill does not appear to have a fiscal impact on local governments. The fiscal impact on state government is unknown but not anticipated to be significant.

The Council on Smarter Government adopted one amendment that is traveling with the bill. The bill amends several sections to state that certain procedural changes are intended to apply to associations existing on the effective date of the changes. The amendment includes the statement in a section that was inadvertently omitted in the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Chapter 718, F.S., the "Condominium Act," governs condominium associations. A condominium is "that form of ownership of real property which is created pursuant to the provisions of this chapter, which is comprised 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." The term "multicondominium" is defined in Chapter 718, F.S., to mean a real estate development containing two or more condominiums, all of which are operated by the same association."

See "Section-By-Section Analysis", below.

C. EFFECT OF PROPOSED CHANGES:

See "Section-By-Section Analysis", below.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 718.1255, F.S., to provide that mandatory arbitration of controversies over condominium association election of a director of the board of administration must be resolved on an expedited basis.

Present Situation: Arbitration of certain disputes involving condominium (or cooperative) associations and unit owners is required before an action in court may be pursued. Section 718.1255(1)(b)1., F.S., provides that the failure of a condominium association to "properly conduct elections" is one of the types of dispute that must be referred to arbitration.

Section 718.1255(4)(c), F.S., provides that, upon receipt of a petition for arbitration, the petition must be promptly reviewed by the division to determine the existence of a dispute and compliance with filing requirements. If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. A verified petition alleging facts that, if proven, would support entry of a temporary injunction must accompany the motion. If an appropriate motion and supporting papers are filed, the division may place the arbitration on hold pending a court hearing and disposition of a motion for temporary injunction.

An arbitration decision may not be a final adjudication of the issues presented. Section 718.1255(4)(k), F.S., provides that, within 30 days of an arbitration decision, either party may file an action in state court regarding the dispute that had been presented for arbitration. If neither party files a state court action within 30 days of the arbitration decision, the decision is final and may be enforced.

Effect of Proposed Changes: This bill adds a new subsection (5) to s. 718.1255, F.S., entitled "Disputes Involving Election Irregularities". The new subsection provides that a challenge to the legality of the election of a director of the board of administration of a condominium received by the division in a petition for arbitration must be handled on an expedited basis. The division is required to respond to the challenge in the same manner as provided in division rule for recall arbitration disputes.

Section 2. Amends s. 702.09, F.S., to amend the definition of "mortgage" to specify that an association assessment lien may be served the same as a mortgage foreclosure; to specify that a county court can process lien foreclosures.

Section 3. Amends s. 718.104, F.S., regarding the creation of condominiums and the contents of a declaration of condominium ("declaration").

Present Situation:

Chapter 2000-302, LOF, created paragraph (h) of subsection (4) of section 718.104, F.S., relating to declarations. A declaration recorded on or after July 1, 2000, in which the developer reserves the right to create a multicondominium development, must state, or provide a specific formula for determining, the fractional or percentage shares of liability for common expenses and of ownership of the common surplus to be allocated to the units in each condominium to be operated by the association. If the declaration does not set forth such information, then the share of liability for the common expenses of the association and ownership of the common surplus of the association allocated to each unit shall be a fraction of the whole where the numerator is 1 and the denominator is the total number of units in the condominiums operated by the association.

Subsection (5) of section 718.104, F.S., provides that a declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units. The District Court of Appeal has held that a restriction created by an amendment to a declaration may not apply to current owners, Woodside Village Condominium v. Jahren, 754 So.2d 831 (Fla. App.2 Dist. 2000) In the suit that is now before the Florida Supreme Court, condominium unit owners brought suit against their association to challenge declarations amendments that prohibited unit owners from leasing units for more than nine months. The Second District Court of Appeal held that those unit owners who had acquired units for annual rental purposes acquired substantial rights, which could not be taken away without their consent.

Effect of Proposed Changes:

This bill clarifies these provisions apply to declarations recorded on or after July 1, 2000.

The bill modifies provisions of s. 718.104 (5), F.S., to specify that amendments to a declaration apply to owners of record existing on the effective date of the amendments. It further specifies this section is clarifying existing law and applies retroactively to associations in existence at the time of enactment of the changes to these provisions.

Section 4. Amends 718.106, F.S., to clarify the statutory authority to transfer use rights to other unit owners and state this section is clarifying existing law and applies retroactively to associations in existence at the time of enactment of the changes to these provisions.

Present Situation: A condominium unit is a real property interest. When a condominium unit is sold, certain legal rights must be sold with the unit, known as appurtenances. Section 718.107, F.S., prohibits a unit owner from transferring the rights in common elements separate from sale or transfer of the appurtenant condominium unit. The courts have ruled that s. 718.107, F.S., prohibits the transfer of appurtenances separate from the condominium unit. See *Brown v. Rice*, 716 So.2d 807 (Fla. 5th DCA 1998).

During the 2000 legislative session major legislation was passed into law as chapter 2000-302, Laws of Florida, which, in part, related to condominiums. The act created the right to transfer appurtenances to a condominium unit to another unit owner, if otherwise permitted by the declaration. The intent of the legislation was to overrule the effect of *Brown v. Rice*. The act also allowed an association to amend its declaration under the provisions of s. 718.110(2), F.S., to provide for the transfer of appurtenances, if the declaration does not already allow it.

Effect of Proposed Changes: This bill is designed to further clarify the statutory authority to transfer use rights to other unit owners. The bill specifies this section is clarifying existing law and applies retroactively to associations in existence at the time of enactment of the changes to these provisions.

The bill provides the transactions essentially are to be handled with the formalities of a deed. The bill requires the transfer of use rights for limited common elements to follow declaration procedures and to comply with deed processes, including appropriate legal descriptions.

Section 5. Amends s. 718.110, F.S., relating to the amendment of a declaration, to clarify the statutory authority to transfer use rights to other unit owners and stating this section is clarifying existing law and applies retroactively to associations in existence at the time of enactment of the changes to these provisions; it specifies that when a unit owner transfers use rights it does not change the material character of the unit appurtenance.

Section 6. Amends s. 718.111, F.S., to extend the timelines for preparing financial reports.

Present Situation:

During the 2000 legislative session major legislation was passed into law as chapter 2000-302, Laws of Florida, which, in part, related to condominiums. The act created, in part, substantial revisions to the reporting requirements of condominium associations pursuant to s. 718.111(13). The act extended from 60 to 90 days the time within which the board must prepare or cause to be prepared by a third party the annual financial report. It also required the association to either mail or hand deliver a copy of the financial report to all unit owners within 21 days after the association receives the report.

Effect of Proposed Changes:

The bill clarifies a conflict between the authority to lease association property (property owned by the association) and common elements (property owned by the unit owners).

The bill extends the deadline for making the report available to 120 days from the end of the fiscal year or earlier if provided in the bylaws. This extension is designed to avoid burdens during "tax season" of March and April that may occur in meeting the 90 day timeline.

Section 7. Amends s. 718.112, F.S., relating to bylaws.

Present Situation: The operation of a condominium association is governed by the articles of incorporation, if the association is incorporated, and the bylaws of the association. Subsection 718.112 (3), F.S., provides that the bylaws may provide for “a method of adopting and amending administrative rules and regulations governing the details of the operation and use of the common elements” and “restrictions on and requirements for the use, maintenance, and appearance of the units and the use of the common elements.”

Effect of Proposed Changes:

The bill states this subsection is designed to clarify existing law and applies to associations in existence at the time of the changes to these provisions and is, therefore, applied retroactively.

Section 8. Amends s. 718.113, F.S., relating to material alterations or substantial additions to the condominium property.

Present Situation: If a declaration does not specify the procedure for approval of material alterations or substantial additions, 75% of the total voting interests of the association must approve the alteration or addition. Chapter 2000-302, LOF, amended s. 718.113, F.S., to specify, as to multicondominium associations, an affirmative vote of 75% of the voting interests of each of the affected condominium associations is required to approve a material alteration or substantial addition to the common elements or to association real property operated by the multicondominium association and allows the declaration to specify a different procedure for approval of a material alteration or substantial addition to the common elements.

Effect of Proposed Changes:

The bill amends s. 718.113 (2) (b) and (c) to specify that these paragraphs are clarifying existing law and apply retroactively to associations in existence at the time of enactment of the changes to these provisions.

Section 9. Amends s. 718.115, F.S., relating to common expenses.

Present Situation:

Section 718.115, F.S., defines common expenses of a condominium association, places limits on how certain funds may be used, and specifies that collection of the funds necessary for common expenses shall be by assessment. Chapter 2000-302, LOF, amended s. 718.115 (1), F.S., to specify, as to multicondominium associations, that common expenses of a multicondominium association are those not directly attributable to the operation of a specific condominium. The common expenses may include categories of expenses related to property within a specific condominium if all members of the association have use rights therein or receive a tangible economic benefit, and requires that such common expenses be identified in the declaration or bylaws.

Effect of proposed Changes:

The bill amends s. 718.115 (1) (b) and (c) to specify that these paragraphs are clarifying existing law and apply retroactively to associations in existence at the time of enactment of the changes to these provisions.

Section 10. Amends s. 718.405, F.S., relating to multicondominiums as created by section 59 of chapter 2000-302, LOF.

Present Situation:

Chapter 2000-302, LOF, created s. 718.405, F.S., to specifically address multicondominiums and multicondominium associations. The act provided, in part, that an association may operate more than one condominium if the declarations of affected condominiums so provide and disclose or describe the following: the manner or formula by which assets, liabilities, and common expenses will be apportioned; whether unit owners in other condominiums, or any other persons, will have use rights to recreational areas, facilities, or amenities, and the formula by which other users will share the common expenses related thereto; the recreational facilities or amenities the developer has committed to provide that are owned or leased by the association but are not included within any condominium, and requiring, if applicable, specific disclosure language in the prospectus for each condominium; and the voting rights of the owners of each unit in the election of directors and other matters.

The legislation also provided for the formation of a multicondominium association by the merger or consolidation of two or more condominium associations.

Effect of Proposed Changes:

The bill amends s. 718.405 to require that the disclosures apply to multicondominiums created after July 1, 2000. It also specifies this section is clarifying existing law and applies retroactively to associations in existence at the time of enactment of the changes to these provisions.

Section 11. Amends s. 718.503, F.S., to remove the requirement for the production of question and answer sheets as part of the disclosure documents in the sale of a condominium unit.

Present Situation: Currently, s. 718.503, F.S., specifies the contents of disclosures that must be provided to a buyer of a condominium from a developer owner of a condominium, as well as, a nondeveloper seller. A nondeveloper seller must provide copies of certain documents to a buyer upon request. These documents include a current copy of the declaration of condominium, articles of incorporation of the association, bylaws, rules of the association, specified financial information, and the question and answer sheet provided for by s. 718.504, F.S.

Section 718.504, F.S., provides that "each buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which shall be in accordance with a format approved by the division..." In practice these sheets may not be timely updated or an association may not have prepared the information in the first place. There is some sentiment that the transaction should not be jeopardized based on these documents not being available.

Effect of Proposed Changes: The bill removes the requirement for a nondeveloper unit owner to provide a question and answer sheet as a part of the documents to be provided to a buyer. The bill also deletes references to the Q&A sheet in the disclosure statements required under this section.

Section 12. Amends s. 718.504, F.S., relating to the prospectus or offering circular.

Present Situation: Chapter 2000-302, LOF, created s. 718.504 (15), F.S., to specifically address multicondominiums. It required that if a condominium is or may become part of a multicondominium, the following information must be disclosed in the prospectus or offering circular:

A statement in conspicuous type stating that the condominium is or may be part of a multicondominium; a summary of the provisions in the declaration and bylaws which establish and provide for the operation of the multicondominium development; the minimum and maximum number of condominiums and the minimum and maximum number of units in each of those condominiums, which will or may be operated by the association, and the latest date by which the exact numbers will be finally determined; whether any of the condominiums may include nonresidential units, and the permitted purpose of such units; and a general description of the land on which any additional condominiums to be operated by the association may be located.

Effect of proposed Changes:

The bill amends s. 718.504, F.S., to require that the information and disclosures apply to condominiums created after July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 17, 2001, the Council on Smarter Government adopted one amendment that is traveling with the bill. The bill amends several sections to state that certain procedural changes are intended to apply to associations existing on the effective date of the changes. The amendment includes the statement in a section that was inadvertently omitted in the bill.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Alan W. Livingston

Staff Director:

M. Paul Liepshutz

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Alan W. Livingston

Staff Director:

Don Rubottom