

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2004

SPONSOR: Regulated Industries Committee and Senator Campbell

SUBJECT: Condominiums

DATE: February 20, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	RI	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill creates provisions on master condominium associations, providing definitions; providing requirements for master association meetings and records, for official association records, and for financial reporting; and providing the powers of the Division of Florida Land Sales, Condominiums, and Mobile Homes (the Division) over master associations.

The bill creates the following sections of the Florida Statutes: 718.701, 718.702, 718.703, and 718.704.

**II. Present Situation:**

Generally speaking, master condominium associations are entities that manage property or facilities in which condominium owners have use rights. Section 718.103(2), F.S., defines "association" as "in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership." This includes some, but not all, master associations. For example, the definition requires that "membership in the entity is composed exclusively of unit owners," which will not be the case if the master association manages improvements in a large development including both condominiums and other types of residential property or commercial property.

Section 718.112(2)(c), F.S., provides the requirements for meetings of condominium boards of administration. Meetings of a board of administration at which a quorum of the members is present must be open to all unit owners. Any unit owner may tape record or videotape meetings

of the board of administration. The right to attend such meetings includes the right to speak with reference to all designated agenda items. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements. Adequate notice of all meetings, which notice must specifically incorporate an identification of agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours preceding the meeting except in an emergency. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one vote of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. However, written notice of any meeting at which non-emergency special assessments, or at which amendment to rules regarding unit use, will be considered must be mailed or delivered to the unit owners and posted conspicuously on the condominium property not less than 14 days prior to the meeting. Evidence of compliance with this 14-day notice must be established by an affidavit executed by the person providing the notice and filed among the official records of the association. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the condominium property or association property upon which all notices of board meetings shall be posted. If there is no condominium property or association property upon which notices can be posted, notices of board meetings shall be mailed or delivered at least 14 days before the meeting to the owner of each unit. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners is inapplicable to meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, when the meeting is held for the purpose of seeking or rendering legal advice.

Section 718.111(12), F.S., provides the requirements for condominium associations' official records. From the inception of the association, it must maintain each of the following items, when applicable, which constitute the official records of the association:

- A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4), F.S.
- A photocopy of the recorded declaration of condominium of each condominium operated by the association and of each amendment to each declaration.
- A photocopy of the recorded bylaws of the association and of each amendment to the bylaws.
- A certified copy of the articles of incorporation of the association, or other documents creating the association, and of each amendment thereto.
- A copy of the current rules of the association.
- A book or books which contain the minutes of all meetings of the association, of the board of directors, and of unit owners, which minutes shall be retained for a period of not less than 7 years.
- A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers.
- All current insurance policies of the association and condominiums operated by the association.
- A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.
- Bills of sale or transfer for all property owned by the association.

- Accounting records for the association and separate accounting records for each condominium that the association operates. All accounting records shall be maintained for a period of not less than 7 years. The accounting records shall include, but are not limited to:
  - Accurate, itemized, and detailed records of all receipts and expenditures.
  - A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.
  - All audits, reviews, accounting statements, and financial reports of the association or condominium.
  - All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.
- Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners, which shall be maintained for a period of 1 year from the date of the election, vote, or meeting to which the document relates.
- All rental records, when the association is acting as agent for the rental of condominium units.
- A copy of the current question and answer sheet as described by s. 718.504, F.S.
- All other records of the association not specifically included in the foregoing that are related to the operation of the association.

The official records of the association must be maintained within the state. They must be made available to a unit owner within 5 working days after receipt of written request by the board or its designee. This requirement may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property.

The official records are open to inspection by any association member or the member's authorized representative at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request shall create a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply with this paragraph. The minimum damages shall be \$50 per calendar day up to 10 days, the calculation to begin on the 11th working day after receipt of the written request. The failure to permit inspection of the association records as provided entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records for inspection. The association must maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet provided for in s. 718.504, F.S., and year-end financial information required in this section on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. Notwithstanding these provisions, the following records are not be accessible to unit owners:

- Any record protected by the lawyer-client privilege as described in s. 90.502, F.S.; and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express direction; which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings.
- Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.
- Medical records of unit owners.

Section 718.111(13), F.S., provides the requirements for condominium associations' financial reporting. Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association must prepare and complete, or cause to be prepared and completed by a third party, a financial report for the preceding fiscal year. Within 21 days after the financial report is completed or received by the association from the third party, the association must mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner. The Division must adopt rules setting forth uniform accounting principles and standards to be used by all associations and shall adopt rules addressing financial reporting requirements for multicondominium associations. In adopting these rules, the Division must consider the number of members and annual revenues of an association. Financial reports must be prepared as follows:

- An association with total annual revenues of \$100,000 or more must prepare or cause to be prepared a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements must be based upon the association's total annual revenues, as follows:
  - An association with total annual revenues of \$100,000 or more, but less than \$200,000, must prepare compiled financial statements.
  - An association with total annual revenues of at least \$200,000, but less than \$400,000, must prepare reviewed financial statements.
  - An association with total annual revenues of \$400,000 or more must prepare audited financial statements.
- An association with total annual revenues of less than \$100,000 must prepare a report of cash receipts and expenditures. An association that operates less than 50 units, regardless of the association's annual revenues, must instead prepare a report of cash receipts and expenditures. A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

- An association may prepare or cause to be prepared, without a meeting of or approval by the unit owners:
  - Compiled, reviewed, or audited financial statements, if the association is required to prepare a report of cash receipts and expenditures;
  - Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or
  - Audited financial statements if the association is required to prepare reviewed financial statements.
- If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:
  - A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;
  - A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
  - A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Such meeting and approval must occur prior to the end of the fiscal year and is effective only for the fiscal year in which the vote is taken. With respect to an association to which the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of financial reports for the first 2 fiscal years of the association's operation, beginning with the fiscal year in which the declaration is recorded. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer.

### **III. Effect of Proposed Changes:**

The bill creates provisions on master condominium associations. It creates s. 718.701, F.S., to provide definitions. "Affected owner" means "a condominium unit owner that has use rights in the common property or facilities administered by the master association. "Master association" means any entity not covered under the definition of "association" in s. 718.103(2), F.S., which has been given, by an association for which control has been transferred, control or decision-making authority over real property or facilities of the association which would otherwise be controlled by that association under its governing documents, and which receives moneys funded by mandatory dues or assessments paid by condominium unit owners, whether or not the master association has a governing body that includes representatives of the condominium association. The term does not include an entity that is granted management or maintenance responsibility under a service contract with a single association. The term also does not include any entity that has been granted or assigned decision-making authority over real property of facilities that include, in whole or in part, a timeshare plan." "Master association documents" means any declaration of covenants and restrictions or other organizational document that governs the property administered by the master association and includes the bylaws and the articles of incorporation of the master association. "Member" means a member of the master association as designated by the master association documents. "Revenues" means all regular or special assessments for reserves, operating or other expenses, and all other sources of revenue, including interest, user fees, developer subsidies, litigation proceeds, and insurance proceeds.

Section 718.702, F.S., is created to provide requirements similar to those in s. 718.112(2)(c), F.S., for master association meetings and records. The master association board must give adequate meeting notice specifying agenda items in the same form and manner as notices of board of director meetings of the association to which the affected unit owners belong. An item not included in the agenda may be taken up on an emergency basis by at least a majority plus one vote of the members of the board. An emergency item must be noticed and ratified at the next regular meeting of the board.

Written notice of any meeting at which the board will consider non-emergency special assessments or amendments to the rules regarding unit use must be mailed or delivered to the members and affected owners and posted conspicuously on the condominium association property not less than 14 days prior to the meeting. The person providing the notice must execute an affidavit of notice as evidence of compliance with these requirements, which must be maintained in the association official records.

All master association board meetings at which a quorum of board members is present are open to the members of the master association and affected owners. Meetings between the board or a committee and the master association attorney regarding proposed or pending litigation, or board or committee meetings pertaining legal advice, are not open to the association members and notice is not required.

The right to attend meetings includes the right to speak. The master association may adopt written reasonable rules regarding the frequency, duration, and manner of unit owner statements.

Subsection 718.111(12), F.S., regarding official association records, applies to master associations. References in that subsection to unit owners apply to members and affected owners. References to condominium documents refer to master association documents.

Section 718.704, F.S., is created to provide financial reporting requirements. The reporting requirements are stated in terms of a requirement that a condominium association obtain specific financial reports from the master association. The requirements are based on the amount of master association annual revenue, as follows:

- If total annual revenue of a master association is \$100,000 or less, the association must obtain a complete cash basis financial report of actual receipts and expenditures for the prior fiscal year from the master association for inclusion in the association's records.
- If total annual revenue of a master association exceeds \$100,000, the association must prepare a complete set of financial statements in accordance with generally accepted accounting principles as follows:
  - If total annual revenue of the master association exceeds \$100,000 but is less than \$200,000, the association shall obtain compiled financial statements from the master association for inclusion in the association's records.
  - If total annual revenue of the master association exceeds \$200,000 but is less than \$400,000, the association must obtain reviewed financial statements from the master association for inclusion in the association's records.
  - If total annual revenue of the master association exceeds \$400,000, the association must obtain audited financial statements from the master association for inclusion in the association's records.

The association must obtain the financial reports or statements within 90 days following the end of the fiscal year to which the reports or statements relate. The condominium association must make the reports or statements available to condominium unit owners in the manner and form required under its governing documents, but no later than 14 days after receipt.

Master associations may exceed these reporting requirements.

This section does not limit public records or disclosure requirements that are required of a master association or association under their governing documents or under any other provision of law.

Section 718.703, F.S., is created to provide the powers of the Division over master associations. On demand by the Division, any condominium association must notify the Division of any master association with which it is associated which is pertinent to any inquiry or investigation regarding the rights of individual unit owners, and must provide copies of documents that establish and govern the relationship between the association and the master association.

The bill takes effect July 1, 2002.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Condominium unit owners that belong to condominium associations that are members of condominium master associations should be better protected.

C. Government Sector Impact:

The bill expands the Division's jurisdiction and may increase its costs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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