

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty -- This bill increases restrictions on condominium and homeowner's associations.

B. EFFECT OF PROPOSED CHANGES:

Background

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 units owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.³

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

Homeowners' association means a Florida corporation responsible for the operation of a subdivision in which voting membership is made up of parcel ownership and 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.⁶ Homeowners' associations are regulated under chapter 720, F.S.

Effect of Bill

Condominium Association -- Obtaining Insurance

Current Law

A unit-owner-controlled association must use its' *best efforts* to obtain and maintain adequate insurance to protect the association, the association property, the common elements, and the property required by statute to be insured by the association.

If the association is developer controlled, then the association must exercise *due diligence* to obtain and maintain insurance. Appointed members of a developer-controlled board commit a breach of fiduciary responsibility by not obtaining and maintaining insurance, unless they can show they exercised *due diligence*.

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ *Neuman v. Grand View at Emerald Hills*, 861 So.2d 494, 496-497 (Fla. 4th DCA 2003)

⁴ Section 718.104(5), F.S.

⁵ Section 718.110(1)(a), F.S.

⁶ Section 720.301(9), F.S.

Proposed Changes

This bill changes the current law standard of "due diligence" in developer-controlled associations to "best efforts," which is a lesser standard.

Condominium Association -- Insurance

Current Law

Hazard insurance provides coverage for specific natural hazards such as fire, wind, earthquakes and vandalism. Every hazard insurance policy that was obtained or renewed on or after January 1, 2004 to protect the condominium must provide primary coverage for:

- All portions of the condominium property located outside the units.
- Condominium property located inside the units as initially installed or replacements of like kind and quality.
- All portions of the condominium property for which the declaration of the condominium requires coverage by the association.

Every hazard insurance policy issued or renewed on or after January 1, 2004 to an individual unit owner must provide that the coverage is excess over the amount recoverable under any other policy covering the same property. Each insurance policy issued to an individual unit owner providing such coverage must be without rights of subrogation against the condominium association. All real or personal property within the boundaries of the unit owner's unit, which is excluded from the association's coverage, must be insured by the individual unit owner.

The casualty insurance an association must obtain excludes all floor, wall and ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, 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 above. However, declarations may require that condominium property consisting of freestanding buildings, where there is no more than one building in or on such unit, does not have to be insured by the association.

An association may obtain and maintain liability insurance for directors and officers, insurance for association employees, and flood insurance for common elements, association property, and units. Adequate insurance coverage by the association may include reasonable deductibles determined by the board based on available funds or predetermined assessment authority at the time the insurance is obtained. The association must obtain and maintain adequate insurance or fidelity bonding for everyone who controls or disburses association funds. The policy or bond must cover the maximum amount of funds that will be in the custody of the association or its management agent at one time. The term "persons in control" includes but is not limited to individuals authorized to sign checks, the association president, the secretary, or the treasurer.

An association or a group of associations may self-insure against claims against the association. A copy of each policy in effect must be made available for inspection by unit owner's at all reasonable times.

Proposed Changes

This bill provides that adequate hazard insurance, regardless of the condominium declaration, must be based on the replacement costs of the property as determined by an independent insurance appraisal or an update of a prior appraisal which must occur every 36 months. The association may provide hazard insurance through a self-insurance fund as long as it complies with the requirements of the self-

insurance fund.⁷ The association may provide adequate hazard insurance coverage individually or for a group of not less than 3 communities if it is created and operating under chapters 718, 719, 720, or 721. Deductibles may be considered in determining hazard insurance.

Hazard insurance that is issued or renewed after January 1, 2009, must contain primary coverage for all parts of the condominium property as originally installed or replacement of like kind and quality and all alterations or additions pursuant to s. 718.113(2), F.S.⁸ Association coverage excludes:

- All personal property within the unit,
- Floors,
- Walls,
- Ceiling coverings,
- Electrical fixtures,
- Appliances,
- Water heaters,
- Water filters,
- Built-in cabinets and countertops, and
- Windows.

The bill provides that every hazard insurance policy issued or renewed on or after January 1, 2009, to an individual unit owner must include a special assessment of not less than \$2,000 per occurrence.

This bill provides that improvements or additions which do not benefit ALL unit owners must be insured by the unit owner or owners who use the improvement or addition. Otherwise, the association may insure the improvements or additions at the expense of the unit owners who use it.

Unit owners are responsible for reconstruction costs of any part of property for which they must have casualty insurance. An association may charge the unit with an enforceable assessment for any work the association has undertaken under s. 718.116, F.S. This bill provides that the association is an additional named insured and loss payee on all casualty insurance policies of unit owners.

This bill requires that reconstruction work be undertaken by the association except as otherwise permitted. A unit owner may not perform reconstruction on portions of the unit without prior written consent of the board of administration. The board of administration can rely on repair methods, qualification of the proposed contractor, and the contract used as conditions of giving consent. Furthermore, the bill requires that the unit owner obtain all the required permits before beginning reconstruction.

The bill provides that multicondominium associations may elect to operate as one condominium by majority vote for insurance purposes including hazard insurance and deductibles and damages that exceed coverage. The election to do this must be treated as an amendment to the declaration of all the condominiums involved and recorded according to s. 718.110, F.S.⁹ Furthermore, the cost of insurance must be placed in the association budget.

The association may amend the declaration of the condominium without regard to any requirement for mortgagee approval of amendments affecting insurance requirements in order to conform to the requirements of this section.

⁷ Section 624.460-624.488, F.S.

⁸ Section 718.113(2), F.S., provides in part there should be no material alteration or substantial addition to the common elements of any condominium operated by a multicondominium association, except as provided in the declaration, articles of incorporation, or the bylaws.

⁹ Section 718.110, F.S., provides that if the declaration does not provide for the process of amending, then it can be amended if approved by more than four-fifths of the voting interests.

Any portion of condominium property that the association requires to be insured for casualty insurance which is damaged by casualty must be reconstructed, repaired or replaced as necessary by the association as a common expense. Hazard insurance, deductibles, uninsured losses, and other damages in excess of hazard insurance coverage are common expenses as well. However:

- A unit owner is responsible for the cost of repair or replacement of condominium property which is not paid for by insurance when damage is caused by intentional conduct, neglect, or failure to comply with the terms of the declaration or association rules by a unit owner, his or her family, tenants, guests or invitees. Furthermore, the unit owner is without subrogation rights.
- The unit owner is also financially responsible under this bill for the cost of repair or replacement of personal property of another unit owner or the association when the damage is caused by intentional conduct, neglect, or failure to comply with the terms of the declaration or association rules.
- If the unit owner is reimbursed by insurance proceeds that go to the association, then the association must reimburse the unit owner without a waiver of any subrogation rights.
- The association is not obligated to pay for reconstruction or repayment of casualty losses when losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim had been settled or is untimely filed and considered denied by the insurance company.

An association may opt out of hazard insurance, deductibles, uninsured losses and other damages covered by common expenses by a majority vote. The association may allocate instead and perform repair or reconstructions as originally provided in the declaration. The vote may be approved by voting interests of the association without regard to any mortgagee consent requirements.

If a multicondominium association has not consolidated its financial operations as discussed previously, any condo operated by the association may opt out of the provisions above with approval of the majority of total voting interests in that condominium. Such a vote may be approved by the voting interests without regard to any mortgagee consent requirements.

Any association or condominium voting to opt out of the above provision, must record the notice with the date of opt out vote and the official records book and page where the declaration is recorded. Opt out is effective on the date of recording of notice in public records of the association. An association that opted out may reverse that decision by the same majority vote required and record it in the official records.

An association will not have to pay for reconstruction or repair due to casualty loss for any improvements installed by a current or former unit owner or developer where it benefits the unit owner only and is not a part of the standard improvements.

Furthermore, policies may include deductibles as determined by the board. Florida case law defines a "deductible" as "a clause in an insurance policy that relieves the insurer of responsibility for an initial specified loss of the kind insured against."¹⁰ The deductibles:

- Must be consistent with industry standards and practices,
- May be based on available funds, including reserve accounts or predetermined assessment authority, and
- Must be established by the board the level of deductibles based on available funds and predetermined assessment at a board meeting that is open to all unit owners. Notice of meeting must state the proposed deductible, available funds and assessment authority used by the board, and an estimate of any potential assessment amount for each unit if there is any.

¹⁰ General Star Indem. Co. v. West Florida Village Inn, Inc., 874 So.2d 26 (Fla. 2nd DCA 2004), Citing *Merriam-Webster's Collegiate Dictionary* 471 (deluxe ed.1998)

The association must require unit owners provide evidence of a current, effective hazard and liability insurance policy upon request. The request cannot occur more than annually. If a unit owner fails to provide evidence within 30 days of a written request, then the association may purchase a policy on the owner's behalf and collect the payment for the policy according to s.718.116, which provides in part for a payment of interest not to exceed \$25 or 5% of each fee that is late.

Condominium Association -- Inspection of Records

Current Law

Section 718.111, F.S., provides that official records be open to inspection by association members or their representatives at all reasonable times. The records must be made available to a unit owner within five days of receipt of a written request. Failure to produce the records within 10 days creates a rebuttable presumption that the association willfully did not comply.¹¹ The following are expressly exempted from inspection by a member or parcel owner:

- any record protected by attorney-client or work-product privilege;
- information obtained by the association with the lease, sale or transfer of a parcel that is otherwise privileged by state or federal law;
- disciplinary, health, insurance and personnel records of the association's employees; or
- medical records of parcel owners or other community residents.¹²

Proposed Changes

This bill provides that a condominium association's records be made available to a unit owner within 5 days of receipt of a written request. This bill defines "available" as supplying the originals or a copy of the official records of the association for inspection or copies within 30 miles driving distance of the condominium. This bill further provides that when a unit owner requests in writing that the record be available to him or her, the board or its designee must send a written acknowledgement of the request within five business days. The acknowledgement must contain the date, time and place where the records will be made available. This bill further adds that the following information about unit owners is not accessible to other unit owners in addition to the exempted items listed above:

- birth dates,
- social security numbers,
- drivers' license numbers,
- financial account numbers, and
- credit card numbers.

This bill provides that the association's failure to provide access to records within 10 days of *receipt of a written request received by certified mail, return receipt requested*, creates a rebuttable presumption that the association willfully did not comply. Therefore, unless the association receives a written request to inspect the official records, they will not be held to have willfully not complied. This bill further provides that if the association does not have a copy machine and the copies exceed 25 pages, then the vendor or association management company is entitled to reimbursement for the copies, including an hourly rate for the employee, to cover administrative costs.

¹¹ Official condominium records include copies of plans; permits provided by developer; a photocopy of recorded declaration; a photocopy of recorded bylaws; a certified copy of the articles of incorporation; a copy of current rules; a book or books with the minutes of meetings (this must be kept at least 7 years); a current roster of unit owners; current insurance policies; a current copy of management agreement or contract; bills of sale or transfer for all the property; a bill of sale; accounting records; ballots, sign-in sheets, and voting proxies; rental records; a copy of the current question and answer sheet as required by s. 718.504, F.S.; and other records related to the business.

¹² Section 720.303(1),(2),(3),(4), F.S.

Condominium Association -- Financial Reporting

Current Law

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 the bylaws. Types of financial statements or information must be provided based on the total annual revenues of the association.¹³ Section 718.111(13), F.S., provides in part that if the association has a total annual revenue of at least \$100,000, but less than \$200,000, then the association must prepare compiled financial statements. If the association has a total annual revenue of at least \$200,000 and not less than \$400,000 then the association must prepare reviewed financial statements. If the total annual revenue is \$400,000 or more, then the association must prepare audited financial statements. If the total annual revenue is less than \$100,000, then 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.¹⁴ Meetings and approval of budgets must occur prior to the end of the fiscal year.¹⁵

Proposed Changes

This bill increases the total revenue amounts and provides that if the total annual revenues for a condominium association are \$150,000 or more but less than \$300,000, then the association must prepare compiled financial statements. This bill also provides that if an association has a total revenue of at least \$300,000 but less than \$600,000, then the association must review financial statements. If the total annual revenues are \$600,000 or more, then, according to this bill, the association must prepare audited financial statements. Finally, this bill provides that an association with total annual revenues of less than \$150,000 must prepare a report of cash receipts and expenditures.

This bill further provides that fiscal, financial statements subject to the above financial statements do not apply if financial statements were at a level lower than required for each of the prior 3 consecutive years. Therefore this bill provides that financial statements may be waived for not more than 3 consecutive years.

Condominium Association -- Bylaws and Meetings

Current Law

A condominium association's bylaws provide the specific powers and duties of an association. Section 718.112(2), F.S., provides items that must be included in an association's bylaws, and provides that, if the items are not included, then they are deemed by operation of law to be included in the bylaws. Required provisions include in part:

- The powers, duties and the appointment of a condominium board;
- That a board meeting must be open to all unit members; and
- That notice must include an agenda and must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting, except in an emergency.

Proposed Changes

This bill adds provisions to s. 718.112, F.S., to provide that *generally accepted parliamentary rules of order* will be used to conduct board of administration meetings if another way of conducting the meetings is not provided in the condominium bylaws.

¹³ Section 718.111(13), F.S.

¹⁴ Section 718.111(13)(b)(2), F.S.

¹⁵ Section 718.111(13)(d)3, F.S.

Furthermore, this bill provides that if 20 percent of the voting interests petition the board to address an item of business, then the board must address it at the next regular or special board meeting not more than 60 days after receipt of the petition. This bill provides that each member has the right to speak for at least 3 minutes on each matter placed on the agenda by petition as long as the member signs the sign-up sheet or submits a written request to speak prior to the meeting. However, this bill provides that the board is not obligated to take any other action requested by the petition other than placing the item on the agenda. This bill also provides that meetings of unit owners, including the annual meeting, must be held at the time and place provided in the association's bylaws or if they are silent within 20 miles of the condominium property.

Condominium Association -- Annual Budget

Current Law

The proposed annual budget of common expenses must be detailed and show the amounts budgeted by accounts and expense classifications, including, but not limited to, those expenses listed in s. 718.504(21)¹⁶. The budget must include reserve accounts for capital expenditures and deferred maintenance in addition to annual operating expenses.

Proposed Changes

The bill provides that the budgets for annual operating expenses include reserve accounts for capital expenditures and deferred maintenance that occurs *less frequently than annually*. It further provides that these repairs include other items for which the offered maintenance expense or replacement costs exceeds the greater of \$10,000 or \$300 multiplied by the number of units.

Condominium Association -- Common Expenses

Current Law

Various expenses of a condominium are considered common expenses, which are paid for jointly by condominium members.¹⁷ These include in part the operation, maintenance, repair, replacement, or protection of all common elements of the association property. These also include reasonable transportation services, insurance for directors and officers, road maintenance, and security services.¹⁸

Proposed Changes

This bill provides that expenses or items required by the federal, state or local government, including fire safety equipment and water and sewer service, are common expenses, whether or not they are specified as such in the governing documents of the association. This bill provides that the members of the association are jointly responsible for the costs of such expenses.

¹⁶ These expenses include in part: Expenses for the association and condominium; Administration of the association; Management fees; Maintenance; Rent for recreational and other commonly used facilities; Taxes upon association property; Taxes upon leased areas; Insurance; Security provisions; Operating capital; Reserves; Fees payable to the division; and Expenses for a unit owner.

¹⁷ Section 718.115, F.S.

¹⁸ *Id.*

Condominium Association -- Liens

Current Law

A condominium association has the authority to make and collect assessments from unit owners for the purpose of maintaining, leasing, or repairing association property.¹⁹ Assessments must be made against condominium units in an amount sufficient to cover the association's estimated current operating expenses and unpaid operating expenses previously incurred.²⁰ A unit owner is jointly and severally liable with the previous owner for all of a previous condominium unit owner's unpaid assessments that came due before the purchase of the condominium unit.²¹ The association's bylaws must provide for the manner of collecting assessments from unit owners. Section 718.112(2)(g), F.S., provides that assessments cannot be made less frequently than quarterly.

A unit owner is liable for all assessments on the condominium. The association has a lien on each condominium parcel to secure the payment of assessments. If assessments are not paid on the date when they are due, then the declaration of the association may provide a rate of interest to be applied to late fees that does not exceed the rate allowed by law and does not exceed more than 18 percent per year. Also, the declaration may provide for an administrative fee to be applied to a late assessment payment by a unit owner.

An association may impose a special assessment. To impose a special assessment, the specific purpose of the assessment must be stated in writing and delivered to each unit owner. Funds collected from special assessments may only be used for the specific purpose stated in the notice. Any remaining funds are considered common surplus, and at the discretion of the board may be returned to the unit owners or applied as a credit toward future assessments.²² Special assessments, which are approved in accordance with condominium documents, must be delivered by written notice to each unit owner. There is no time limit as to when such notice must be delivered to unit owners.

Proposed Changes

This bill provides that that any lien claim which is filed on or after January 1, 2009, must include a statement from the executing officer or authorized agent attesting that on a date no later than 30 days prior to the date of filing, the record owner was given written notice of the amount due and of the intention to file a claim of lien in the amount due if not fully paid within 30 days from receipt of the notice. The bill provides that statement must also attest that the notice was given by personal delivery to the unit owner or a certified or registered copy was mailed, return receipt, to the unit owner at his or her last known address. This bill also provides that at least 60 days advance notice must be given to all unit owners to pay nonemergency special assessments.

Condominium Association -- Emergency Powers

Current Law

Florida law currently provides that the requirement to have at least 48 hours of notice for meetings does not have to be followed in the case of an emergency. Furthermore, any item that is not noticed may be taken up in a meeting on an emergency basis by a majority plus one member of the board. However, the action must be ratified at the next meeting. Florida law also provides that s. 718.3026, F.S. which deals with competitive bids does not limit the association's ability to obtain products and services in an emergency.

¹⁹ Sections 718.103(1), F.S.; Section 718.111(4), F.S.

²⁰ Section 718.112(2)(g), F.S.

²¹ Section 718.116(1)(a), F.S.

²² Section 718.116, F.S.

Florida law does not currently provide emergency powers for condominium associations in the event of a state emergency.

Proposed Changes

This bill creates s. 718.1265, F.S., relating to association emergency powers. It provides that an association may exercise the following powers, to the extent allowed by law and if not expressly prohibited by the association governing documents, when there is an event that is declared a state emergency:

- Conduct board meetings and membership meetings with notice as is practical.
- Cancel and reschedule association meetings.
- Name any person who is not a director as an assistant officer. Assistant officers have the same authority as executive officers whom they are assisting during the state of emergency.
- Relocate association's principal office or designate an alternative office.
- Enter into agreements with counties and municipalities to assist with debris removal.
- Implement a disaster plan before or immediately after the event that is declared a state emergency, the plan can include but not limited to:
 - Shutting down or off elevators, electricity, water, sewer, or air conditioners.
 - Declaring any portion of the condominium property unavailable for entry or occupancy.
 - Requiring evacuation of condo property when there is a mandatory evacuation. If any unit owner fails or refuses to evacuate, then the association is immune from liability for injury.
 - Determining whether the condominium can be safely inhabited.
 - Mitigating damage by making repairs.
 - Contracting on behalf of unit owners or owner for services which the unit owner would be individually responsible for, but is necessary to prevent further damage to condominium property. Unit owners are responsible for re-imbusement to the association.
 - Levying special assessments without owner votes regardless of declaration, articles or bylaws.
 - Using reserve funds and borrowing money and pledging association assets as collateral to fund emergency repairs without unit owner approval.

This bill provides that the special powers authorized are limited to the reasonable time necessary to protect the health, safety, and welfare of the association and unit owners.

Condominium Association -- Agreements and Contracts

Current Law

A written contract between an association and a maintenance company or management services company is not valid or enforceable, unless the contract specifies a minimum number of personnel to be employed by the maintenance or management services company and discloses any financial or ownership interest with the developer if the developer is in control of the association.²³

Proposed Changes

This bill removes the requirement that a contract list a minimum number of personnel to be valid. Therefore, a contract only has to disclose any financial or ownership interest with the developer if the developer is in control of the association to be valid. This bill also provides that no clause executed on

²³ Section 718.3025, F.S.

or after January 9, 2009, will be enforceable to the extent that it provides for automatic renewal or extension of the contract.

Condominium Association -- Obligations of Owners and Fines

Current Law

If the declaration or bylaws provides, then an association may levy reasonable fines against an occupied unit's owner or its occupant, licensee, or invitee if he or she fails to comply with reasonable association rules. The fine cannot exceed \$100 per violation, cannot become a lien against a unit, and may be levied on each day of a continuing violation up to \$1,000 with only one opportunity for notice and hearing. The hearing must be held before a committee of other unit owners, and if the committee does not agree with the fine, then it may not be levied.

Proposed Changes

This bill provides that the committee of unit owners for a hearing under s. 718.303, F.S., must not include board members or persons residing in a board member's household.

Condominium Association -- Ombudsman

Current Law

The Office of the Condominium Ombudsman was established to be a neutral resource for unit owners, board members, condominium associations and others. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the department, the division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the division. In addition the ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers.²⁴

The ombudsman also acts as a liaison among the division, unit owners, boards of directors, board members, community association managers, and other affected parties and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities. The ombudsman is authorized to encourage and facilitate voluntary meetings with and between unit owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy

Proposed Changes

This bill removes the requirement that the ombudsman develop *policies and procedures* to assist unit owners, boards of directors, board members, community association managers, and other affected parties of their rights and responsibilities in regard to condominiums and condominium associations. Instead, this bill provides that the ombudsman must assist those listed in their responsibilities, but the ombudsman is no longer required to develop policies and procedures for how to do so.

Condominium Association -- Prospective Purchaser Disclosure

Current Law

When a unit owner, who is not a developer, sells his or her unit, the seller must provide at his expense the prospective purchaser with a copy of the condominium's declaration, articles of incorporation,

²⁴ Section 718.5012(6), F.S.

bylaws and rules of the association, financial information required by s. 718.111, F.S., and a "Frequently Asked Questions and Answers" document required by s. 718.504, F.S.

Proposed Changes

This bill provides that in addition to the documents that must currently be provided to a prospective unit purchaser, a non-developer seller must provide a copy of a governance form. The form must be provided by the division (Department of Business and Professional Regulations) summarizing governance of condominium associations and must address the following subjects:

- Role of the board in day-to-day affairs;
- Board's responsibility to provide notice of meetings;
- Rights of owners to attend meetings;
- Responsibility of board regarding maintenance;
- Responsibility of board to abide by governing documents;
- Owners' rights to inspect records;
- Remedies when board exceeds their powers;
- Right of board to hire property management;
- Responsibility of owners to pay assessments;
- Voting rights of owners; and
- Right of board to enforce rules.

Homeowners' Association -- Swimming Pool Supervision

Current Law

Public swimming pools must be supervised by the Department of Health.²⁵ Swimming pools serving 32 or less condominium or cooperative units, which are not operated as public lodging, are exempt from supervision by the Department of Health.²⁶ However, pools under homeowners' associations are considered public and, therefore, must be supervised.²⁷

Proposed Changes

This bill adds homeowners' associations serving 32 units or less to the list of pools exempt from supervision by the Department of Health. This bill adds the definition of homeowners' associations to s. 514.011, F.S. as provided in s. 720.301, F.S.²⁸

Homeowners' Association -- Board Meetings

Current Law

Section 720.303(2), F.S., provides procedures for homeowners' association board meetings. 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 3 minutes on any matter placed on the agenda by petition of the voting interests.

²⁵ Section 514.0115, F.S.

²⁶ Section 514.0115, F.S.

²⁷ *Supra at note 7.*

²⁸ Section 720.301, F.S., provides that a homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision where voting members are made up of parcel owners or agents and membership is mandatory for parcel ownership. A homeowners' association is authorized to impose assessments and create a lien on the parcel if they are not paid.

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, then notice of the board meeting must be mailed or delivered to each association member at least 7 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.²⁹

A board may not levy assessments at a meeting unless the notice of the meeting includes the nature of those assessments and a statement that the assessments will be considered at the meeting.³⁰ Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This also applies to meetings of any committee or similar body when a final decision will be made regarding the spending of association funds. Proxy voting or secret ballots are also not allowed when a final decision will be made regarding approving or disapproving architectural decisions with respect to a specific parcel of residential property owned by a member of the community.³¹

Proposed Changes

This bill provides that members have the right to speak on *any* matter placed on the agenda at a board meeting, not just matters placed on the agenda by a petition of voting interests. Also, this bill provides that a member may speak on nonagenda issues following the completion of the regular agenda.

This bill provides that notice of a special board meeting can be made with less than 48 hours notice when there are *sudden, unforeseen happenings which require action to protect the lives or property of association members*. The bill also provides that in cases of sudden unforeseen happenings, the notice of a meeting regarding assessments to be levied is not required.

Homeowners' Association -- Budgets and Reserve Accounts

Current Law

Section 720.03, F.S., provides that, in addition to annual operating expenses, the association budget may include reserve accounts for capital expenditures and deferred maintenance for which the association is responsible, to the extent that the association's governing documents do not limit increases in assessments. An association is deemed to have provided reserve accounts when reserve accounts have been initially established by the developer or when the membership of the association affirmatively elects to provide for reserves.

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. Once established, the reserves accounts must be funded, maintained, or have their funding waived.³² If the budget of the association does not provide for reserve accounts and the association is responsible for the repair and maintenance of capital improvements that may result in special assessments if reserves are not provided, then each financial report for the preceding fiscal year must contain a statement in conspicuous type.

²⁹ Section 720.303(2)(c)1, F.S.

³⁰ Section 720.303(2)(c)2, F.S.

³¹ Section 720.303(2)(c)3, F.S.

³² Section 720.03(6)(d), F.S.

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, then 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 principle.

Proposed Changes

This bill provides that if reserve accounts are not initially provided by the developer or elected by the membership, then reserve accounts are limited to the extent that the governing documents limit increases in assessments, including reserves. This bill further provides that if the reserve accounts are created initially by a developer or elected by the membership majority, then the reserves will be determined, maintained, and waived according to s. 720.01, F.S.

This bill declares that it does not preclude termination of a reserve account upon approval of a majority of the association voting interests. Upon such removal, this bill provides that the reserve account must be removed from the budget.

This bill also provides that if the budget of the association does not provide for reserve accounts created or established initially by the developer or elected by the majority of the voting interests, then there must be a statement in bold print on each financial report for the preceding fiscal year which states in part that the association does not provide reserve accounts for capital expenditures and owners may select to provide for reserve accounts themselves by a majority at a meeting or a majority providing written consent to do so.

The bill provides that if the budget provides for funding of accounts for deferred expenditures, then each financial report for the preceding fiscal year must contain a statement in conspicuous type that states in part that the budget does provide for limited, voluntary deferred expenditure accounts and that those funds are not subject to the restrictions on use of funds set forth in that statute.

In addition to the projected annual cash inflows which may include earning statements from investment principle, this bill provides that accounts receivable, minus the allowance for doubtful accounts, may be included in the projected annual cash inflow.

This bill provides 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. This 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 approve in accordance with procedures established by the governing documents; or
- Recovery of insurance proceeds.

Homeowners' Association -- Financial Reporting

Current Law

A homeowners' association has 90 days, or annually as provided by the bylaws, to prepare and complete a financial report for the preceding fiscal year. The chapter currently provides what types of

financial statements or information must be provided based on the total annual revenues of the association.³³

If the association has a total annual revenue of at least \$100,000, but less than \$200,000, then it must prepare compiled financial statements. If the association has a total annual revenue of at least \$200,000 and not less than \$400,000, then the association must prepare reviewed financial statements. If the total annual revenue is \$400,000 or more, then the association must prepare audited financial statements. If the total annual revenue is less than \$100,000, then a report of cash receipts must be prepared.

If 20 percent of parcel owners petition the board for a level of financial reporting higher than required, then the association must notice and hold a meeting within 30 days of receipt of the petition to vote on the issue. Upon a majority approval, the association must prepare a budget or adopt a special assessment and must provide within 90 days or at the end of the fiscal year, whichever one is later:

- Compiled, reviewed, or audited financial statements;
- Reviewed or audited financial statements; or
- Audited financial statements.

Proposed Changes

This bill increases the total annual revenue numbers for the purpose of financial statements. It provides that if the total annual revenues for a condominium association are \$150,000 or more but less than \$300,000, then the association must prepare compiled financial statements. An association whose total revenues are at least \$300,000 but less than \$600,000 must review financial statements under this bill. If the total annual revenues are \$600,000 or more, then the association must prepare audited financial statements. Finally, this bill provides that an association with total annual revenues of less than \$150,000 must prepare a report of cash receipts and expenditures.

This bill further provides that upon a majority approval, the association must prepare a budget or adopt a special assessment and must provide within 120, instead of 90 days, or at the end of the fiscal year, whichever one is later:

- Compiled, reviewed, or audited financial statements;
- Reviewed or audited financial statements; or
- Audited financial statements.

Homeowners' Association -- Remedies at Law

Current Law

Section 720.305, F.S., provides that members and their tenants, guests and invitees must adhere to association rules and that the association may take action at law for failure or refusal to comply. The prevailing party in such litigation is entitled to attorney's fees and costs.

The association may levy a fine for each day a violation is continued and must provide only a single notice and opportunity to be heard. The fine cannot exceed \$1,000, unless otherwise provided by the governing documents. However, a fine cannot become a lien against a parcel.

To impose a fine or suspension, the association must give at least 14 days notice to the member and an opportunity for a hearing before a committee of at least 3 members appointed by the board. The members cannot be officers, directors, or employees of the association or close relatives of such persons. If the committee does not approve the fine, then it cannot be imposed. However, this does

³³Section 720.303(7), F.S.

not apply to fines do to nonpayment of assessments. Suspension of common area use rights do not impair the owner or tenant from ingress or egress.³⁴ If the governing documents provide, the association may suspend voting rights for the nonpayment of regular annual assessments that are over 90 days delinquent.

Proposed Changes

This bill provides that the prevailing party may recover reasonable attorney's fees and costs including post judgment attorney's fees and costs, so long as the court retains jurisdiction to enforce the judgment. This bill further provides that fines less than \$1,000 shall not become a lien on a parcel. Therefore, if liens are allowed in the governing documents to exceed a fine of \$1000, then that fine can become a lien against a parcel. This bill further provides that unless the governing documents provide otherwise, an association may suspend the voting rights of a member for nonpayment of regular annual assessment fines which are 90 days overdue.

Homeowners' Association -- Meetings and Elections

Current Law

Section 720.303(2), F.S., provides procedures for association board meetings. 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 those meetings between the board and its attorney relating to proposed or pending litigation.

Notice of a board meeting must be posted in a conspicuous place in the community at least 48 hours prior to the meeting, except in an emergency. If notice of the board meeting is not posted in a conspicuous place, then notice must be mailed or delivered to each association member at least 7 days prior to the meeting, except in an emergency. For associations that have more than 100 members, the bylaws may provide for a reasonable alternative to this posting or mailing requirement. These alternatives include publication of notice, provision of a schedule 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.³⁵

Special meetings must be held when called by the board of directors, or by at least 10 percent of the total voting interest of the association, unless a different percentage is supplied by the governing documents.³⁶

A homeowners' association bylaws must provide for giving notice of meetings to members, and if the bylaws do not, then the following is deemed by operation of law to be included in the bylaws:

- The board must give actual notice to all parcel owners and members of meetings.
- The notice must be mailed, delivered, or electronically transmitted not less than 14 days prior to the meeting.
- Evidence of compliance with the notice must be made by an affidavit executed by the person providing the notice and filed in the official association records.

Directors may not vote by proxy or secret ballot at board meetings, except that secret ballots may be used in the election of officers. This also applies to meetings of any committee or similar body when a final decision will be made regarding the spending of association funds. Proxy voting or secret ballots

³⁴ Ingress and egress refer to the right of a lessee to enter and leave the land in question. Bryan A. Garner, Black's Law Dictionary, Second Pocket Edition (2001).

³⁵ Section 720.303(2)(c)1., F.S.

³⁶ *Id.*

are not allowed when a final decision will be made on approving or disapproving architectural decisions with respect to a specific parcel of residential property owned by a member of the community.³⁷

Elections of the board of directors must be conducted as set forth in an association's governing documents. All members of the association are eligible to serve on the board of directors, and a member may nominate himself or herself. The board of directors must be elected by plurality of votes. Any election dispute must be submitted to mandatory arbitration if it is between the association and a member.

Proposed Changes

This bill adds that a special meeting of the board must be held when called by the board of directors when *sudden, unforeseen happenings occur that require action to protect lives or property of the association's members*. This bill further provides that notice of special meetings must be made at least 48 hours in advance or less if there is a *sudden, unforeseen happening that requires action to protect lives or property of the association's members*.

The bill provides that if secret ballots are required under the governing documents, then an absentee ballot must be 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. This bill provides that absentee ballots be hand delivered or mailed no later than the date specified in the notice.

This bill further provides that a member may nominate himself or herself if the election process allows voting by absentee ballot. However, the member must do so in advance. This bill also provides that within 30 days of being elected to the board of directors, the director must certify in writing to the association secretary that he or she has read the governing documents³⁸ and that he or she will uphold and discharge the fiduciary responsibility of the members to the best of his or her ability. The bill provides that if the statement is not filed timely, then it will automatically disqualify the member from serving on the board of directors. The bill provides that the association secretary must keep the certification for 5 years after he or she is elected. However, the bill provides that failure to keep it on file does not affect its validity.

This bill also provides that any director who has 3 consecutive, un-excused absences from board meetings is deemed to have submitted his or her resignation to the board.

Homeowners' Association -- Prohibited Clauses

Current Law

Certain clauses are prohibited from homeowners' association documents and are held null and void. Clauses that are prohibited either have the effect or provide that:

- A developer has the unilateral ability to make changes to association documents.
- An association is prohibited or restricted from filing a law suit against a developer.
- After the transition of homeowners' association control, a developer is entitled to an amount that exceeds one vote per lot.

³⁷ Section 720.303(2)(c)3, F.S.

³⁸ The documents that must be certified in writing to have read are as follows: association's declarations of covenants and restrictions, articles of incorporation, bylaws, and current written policies.

Furthermore, homeowners' association documents cannot prohibit a United States flag from being displayed in a respectful, constitutional manner, and association documents entered after October 1, 2001 may not prohibit property from implementing Xeriscape or Florida-friendly landscape.

Proposed Changes

This bill adds that a provision in the covenants that provides or has the effect that the builder or developer is not liable for defects in the construction to common areas or improvements on common areas, or that the developer or builders do not warranty the common areas are free from defects for any period less than 10 years completion, is prohibited.

The bill provides that, except when it is precluded in an association's governing documents, the board may levy assessments on unimproved parcels in the same amount as improved parcels if the parcel has not been improved within 5 years after the date the developer sold the parcel. Therefore, a parcel cannot sit untouched for more than 5 years without having to pay assessments on the parcel.

Homeowners' Association -- Guarantee

Current Law

While the developer is in control of the homeowners' association, it may be excused from payment of its share of the operating expenses and assessments related to its parcels for any period of time for which the developer has obligated itself to pay any operating expenses incurred that exceed the assessments receivable from other members and other income of the association.³⁹

If the guaranteed level and other revenues collected by the association are not sufficient to provide payment, on a timely basis, of assessments, including the funding of reserves, then the guarantor must advance sufficient case to the association when the payments are due.

Proposed Changes

This bill provides that if the guaranteed level and other revenues collected by the association are not sufficient to provide payment, on a timely basis, of all *accounts payable of the association*, including the funding of reserves, the guarantor must advance sufficient case to the association when the payments are due.

Homeowners' Association -- Assessments and Charges

Current Law

Before a homeowners' association can file a lien against a parcel for unpaid assessments or other amounts owed to the association, the association must provide a written notice or demand for past due assessments or any amounts due. The written notice must be sent by registered or certified mail, return receipt requested, and by first-class mail to the parcel owner at his or her last address if the address is within the United States. If the address is outside of the United States, then first-class United States mail is sufficient.

After service of summons on a complaint to foreclose a lien to the parcel which is not the subject of a mortgage, foreclosure or notice of tax certificate sale, or the parcel owner is not in bankruptcy proceeding, then the parcel owner may make a qualifying offer to pay all amounts secured by the lien plus interest at any time before the entry of foreclosure. The qualifying offer must:

- Be in writing;

³⁹ Section 720.308, F.S.

- Be signed by the owner and spouse if applicable;
- Acknowledged by a notary public;
- State the total amount due;
- State the total amount due is secured by the lien;
- State that the association is entitled to foreclose the lien and obtain a foreclosure judgment for the total amount due if the owner breaches the qualifying offer;
- State that the parcel owner will not endanger the priority of the lien or amounts secured by the lien; and
- State the actual date or dates the association will receive the total amount due from the parcel owner.

Proposed Changes

This bill clarifies that the parcel owner subject to the demand must be sent the written notice or demand by first-class United States mail.

This bill further provides that attorney's fees and costs incurred by the association in the foreclosure action which are required to be paid by the parcel owner must be included in the qualifying offer in addition to the list above.

Homeowners' Association -- Prospective Purchaser Disclosure

Current Law

Prospective parcel owners must be given a disclosure summary before the contract for sale is executed. It must be substantially similar in form to the one provided in s. 720.401, F.S. Statements on the form must declare in part that:

- A purchaser will be required to be a member of the homeowners' association,
- There are restrictive covenants,
- The purchaser will have to pay assessments,
- The purchaser may have to pay special assessments,
- Failure to pay assessments could result in a lien, and
- The developer may have the right to amend restrictive covenants without association approval.

Proposed Changes

This bill adds language that must be on the disclosure form. This bill adds that *if the association is still under developer control*, then the developer may have the right to amend restrictive covenants without association approval. The bill further provides that the disclosure form must state that there may be an obligation to pay assessments to a residential community development district for retiring bond obligations used to construct the infrastructure or other improvements. This bill also provides that the declaration must state that the purchaser is jointly and severally liable with the previous owner for all unpaid assessments up to the time of the title transfer.

C. SECTION DIRECTORY:

Section 1 amends s. 514.011, F.S., relating to public swimming and bathing facilities.

Section 2 amends s. 514.0115, F.S., relating to exemptions from supervision or regulation.

Section 3 amends s. 515.25, F.S, relating to the residential swimming pool safety act.

Section 4 amends s. 718.11, F.S., relating to the association.

Section 5 amends s. 718.112, F.S., relating to bylaws.

Section 6 amends s. s. 718.115, F.S., relating to common expenses and common surplus.

Section 7 amends s. 718.116, F.S., relating to assessments, liability, lien and priority, interest and collection.

Section 8 creates s. 718.1265, F.S., relating to association emergency powers.

Section 9 amends s. 718.3025, F.S., relating to agreements for operation, maintenance, or management of condominiums.

Section 10 amends s. 718.3026, F.S., relating to contracts for products and services.

Section 11 amends s. 718.303(3), F.S., relating to obligations of owners including waiver and levy of fine against unit by association.

Section 12 amends s. 718.5012(4), F.S., relating the powers and duties of ombudsman.

Section 13 amends s. 718.503(2)(a), F.S., relating to developer and owner disclosure prior to sale.

Section 14 amends s. 720.303, F.S., relating to association powers and duties.

Section 15 amends s. 720.305(1), (2), (3), F.S., relating to obligations of members, remedies at law or in equity, levy of fines and suspension of use rights.

Section 16 amends s. 720.306(3),(5),(8),(9), F.S., relating to meetings of members.

Section 17 amends s. 720.307(5), F.S. relating to transition of association control in a community.

Section 18 amends s. 720.3075(1)(d), F.S., relating to prohibited clauses in association documents.

Section 19 amends s. 720.208(4)(a), F.S., relating to case funding requirements during guarantee.

Section 20 amends s. 720.3085(4)(b) and (6)(c), relating to payments for assessments.

Section 21 amends s. 720.401(1)(a), F.S., relating to prospective purchasers subject to association membership requirement.

Section 22 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Per DBPR, the bill appears to have an unknown fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Per the Office of Insurance Regulation, the impact on the private sector is unknown. See Fiscal Comments.

D. FISCAL COMMENTS:

State

Per OIR, there is no fiscal impact to their office.

Per DBPR, "the bill includes several new regulations that are likely to generate additional complaints, such as requiring association meetings to be conducted using generally accepted parliamentary rules. However, it is unknown at this time whether the additional workload will be significant enough to require additional FTE."

Private Sector

The impact on the private sector is unknown due to the inability to calculate how many individuals would be affected by this bill. The following are the possible impacts on the private sector:

- This bill requires a non-developer unit owner to give a copy of the governance form to prospective buyers in addition to other forms. The cost for copying the form and giving it to prospective buyers could create a very minimal cost to unit owners.
- This bill requires homeowners to send written requests to inspect documents *first class mail, return receipt*.⁴⁰
- This bill provides for administrative and copying fees for a unit owner's request for records. However, the bill does not list who will pay the fee. If the unit owner is responsible for the fee, then this would also be direct cost to the unit owner.
- This bill provides that state, local and government requirements are common expenses that must be paid for jointly by unit or parcel owners.
- This bill requires that condominiums must have an independent insurance appraisal or an update of a prior appraisal every year. This would increase the costs to individuals and the condominium association.
- This bill provides that a homeowners' association board may levy assessments on unimproved parcels if they have not been improved within 5 years. This will result in more money for the associations; however, it will require individuals with undeveloped parcels to pay levies to the association.
- This bill specifies that the winning party in litigation between the association and a unit or parcel owner may recover all attorney fees and costs as long as the court retains jurisdiction.

⁴⁰ The United States Postal Service rate for a standard envelope is \$0.58 for first-class mail. If a return receipt is received back by mail and is requested at the time of mailing, it is \$2.15. If a return receipt is received back electronically and is requested at the time of mailing, then it is \$0.85. If a return receipt is requested after mailing, it is \$3.80. Available at <http://pe.usps.gov/text/dmm300/503.htm#wp1063739>. Accessed on February 13, 2008.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill refers to homeowner's association "units." However, condominiums have "units," and homeowners' associations have "parcels."

This bill defines "available" under Section 718.111, F.S for the purposes of making official records accessible to condominium unit owners but uses the word "available" within the definition.

This bill specifies that *generally accepted parliamentary rules of order* must be used to conduct board meetings. However, what constitutes "generally accepted parliamentary rules of order" is not defined.

This bill provides that a non-developer seller of a condominium unit must provide a copy of governance form to prospective purchasers. However, there is no penalty provided if the unit owner does not give this form to prospective purchasers. It is possible that failure to give the form may make a sale voidable, which may lead to title insurance problems.

This bill appears to prevent waiver of financial documents for more than 3 years in a row. However, this could be interpreted as only applying to financial statements prior to this bill.

This bill provides for nonemergency special assessments but does not define what would constitute a nonemergency special assessment under this bill.

Line 1382 seems to be missing "or" between "attorney" and "with."

D. STATEMENT OF THE SPONSOR

No Statement Submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A