



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - The bill makes numerous changes to the regulations applicable to condominium associations.

Safeguard Individual Liberty - The bill prohibits associations from forbidding the attachment of religious items of the front door area of a condominium unit.

### 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".<sup>1</sup> A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.<sup>2</sup> 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.<sup>3</sup>

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.<sup>4</sup> 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.<sup>5</sup>

The Department of Business and Professional Regulation's Florida Division of Land Sales, Condominiums and Mobile Homes (division) is charged with carrying out this regulatory responsibility under the provisions of the act. The division's mission is to provide consumer protection to condominium residents through education, developer disclosure, enforcement, and alternative dispute resolution.

#### Windstorm Insurance

##### *Current Law*

Windstorm insurance for no less than 3 communities created and operated under chapters 718-721, F.S., may be obtained and maintained for the community if the coverage is enough to cover a 250 year windstorm event. The probable maximum loss must be determined through the use of a competent model accepted by the Florida Commission on Hurricane Loss Projection Methodology.

##### *Proposed Changes*

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<sup>1</sup> Section 718.103(11), F.S.

<sup>2</sup> Section 718.104(2), F.S.

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

<sup>4</sup> Section 718.104(5), F.S.

<sup>5</sup> Section 718.110(1)(a), F.S.

This bill removes the requirement that condominiums obtain and maintain windstorm insurance.

## Sanctions

### *Current Law*

If the division has reasonable cause to believe that a violation of s. 718, F.S., has occurred, then the division may institute enforcement proceedings in its own name against any developer, association, officer, or member of the board of administration, or its assignees or agents, as follows:

- The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person
- The division may issue an order requiring the developer, association, officer, or member of the board of administration, or its assignees or agents, to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter. Such affirmative action may include, but is not limited to, an order requiring a developer to pay moneys determined to be owed to a condominium association
- The division may bring an action in circuit court on behalf of a class of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution
- The division may impose a civil penalty individually against any officer or board member who willfully and knowingly violates a provision of this chapter, a rule adopted pursuant hereto, or a final order of the division. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division.

Furthermore, the division adopted guidelines for imposing penalties as directed by s. 718.501(1)(d)4, F.S. The division guidelines provide penalties for various violations which include fines. However, a penalty should never be more than \$5,000 for a single violation.<sup>6</sup>

### *Proposed Changes*

This bill adds the provisions that any officer, director, or manager who knowingly or intentionally defaces, destroys, or fails to create or maintain accounting records is personally subject to a civil penalty pursuant to s. 718.501(1)(d), F.S., as well as appropriate criminal sanctions.

## 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 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.<sup>7</sup>

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<sup>6</sup> 61B-21.003, F.A.C.

<sup>7</sup> Section 720.303(1),(2),(3),(4), F.S.

Furthermore, s. 718.111(15)(b), F.S., provides that the official records of the association must be maintained within the state and be made available to a unit owner within 5 working days after receipt of a written request.

### *Proposed Changes*

This bill provides that social security numbers, driver's license numbers, credit card numbers, and other personal identifying information of unit owners, occupants or tenants are not accessible to unit owners. This bill further provides that the official records of the association must be kept within the state for 5 years. The bill also provides that the records must be available to a unit owner at a location within the county in which the condominium property is located.

### 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 bylaws. Types of financial statements or information must be provided based on the total annual revenues of the association.<sup>8</sup> 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.<sup>9</sup> Meetings and approval of budgets must occur prior to the end of the fiscal year.<sup>10</sup>

#### *Proposed Changes*

This bill provides that an association may not waive financial reporting for more than 2 consecutive years. Therefore, waiver of financial reporting may only be waived for 2 years in a row.

### Board Meetings

#### *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.

There must be an annual unit owner meeting. Furthermore, notice of meetings where regular assessments against unit owners are to be considered must contain a statement that assessments will be considered at the meeting and the nature of the assessments.

Furthermore, there must be an annual unit owner meeting.

#### *Proposed Changes*

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<sup>8</sup> Section 718.111(13), F.S.

<sup>9</sup> Section 718.111(13)(b)(2), F.S.

<sup>10</sup> Section 718.111(13)(d)3, F.S.

This bill provides that any item not included in the notice may be taken up on an emergency basis by a majority vote plus one of the members of the board *or by a petition of 20 percent of the unit owners.*

This bill provides that the notice for a meeting in which regular or special assessments are to be considered, must specifically state that assessments will be considered and the nature, cost, and breakdown of the assessments. This bill also provides that if the location of the annual board meeting of unit owners is not provided for in the association bylaws, then the meeting must be held in the state within 30 miles of the condominium property.

## Elections

### *Current Law*

Board members must be elected by written ballot or voting machine. Proxies cannot be used to elect the board. Not less than 60 days before a scheduled election, the association must mail, deliver or electronically transmit, either by a separate association meeting or in another association mailing, including regularly published newsletters, a first notice of the date of election to the unit owners. Anyone who wishes to be a candidate for the board must give written notice to the association not less than 40 days before a scheduled election. The association must mail a ballot and a list of all candidates along with the written notice and agenda to all unit owners entitled to vote. If a candidate requests, then association must include an information sheet by the candidate in the mailing. The information sheet cannot be larger than 8 1/2 inches by 11 inches and must be given to the association no less than 35 days before the election. The association is not liable for the contents of the information sheet.

Elections must be decided by a plurality of the ballots cast. There is not quorum requirement, however at least 20 percent of the eligible voters must cast a ballot in order for the election to be valid. A unit owner cannot let anyone else vote his ballot, and if a ballot is cast improperly then it is deemed invalid and a unit owner may be fined by the association for voting improperly as well.

If a vacancy occurs before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if there is less than a quorum, or by the sole remaining director. Alternatively, a board may hold an election to fill the vacancy. If this is the option chosen, then it must conform to the election process outlined already for electing board members, unless the association has opted out of the statutory election process. If the association has opted out, then the association bylaws control.

An association may, by an affirmative vote of a majority of the total voting interests, provide for an alternative voting and election procedure contained in the association bylaws. The vote may be a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by a limited or general proxy.

Unit owners may not vote by general proxy, but may vote by limited proxies. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves, waive the financial reporting requirements of s. 718.111(13), F.S., to amend the declaration, to amend the articles of incorporation or bylaws, and for any other matter which chapter 718 requires or permits.

### *Proposed Changes*

This bill provides that either the association *or its representative* must mail the first notice of the elections, and any unit owner who wishes to be a candidate for the board must give written notice to either the association *or its representative*. This bill further provides that the association *or its representative* must mail, deliver or electronically transmit a second notice. If a candidate so requests,

then the association *or its representative* must include an information sheet. The association or the its representative is not liable for the content of the information sheets. Furthermore, this bill provides that an officer of the association or the manager or other person who provides the first and second notices, must provide an affidavit or United States Postal Service certificate of mailing and include it in the official records of the association.

This bill also provides that all ballot envelopes be placed in a locked or sealed ballot drop box immediately upon receipt and that the box must not be opened in advance of the election meeting. Furthermore, not unit owner can allow another to vote his or her ballot, except for a person who is acting under a specific power of attorney for a unit owner.

This bill removes the provision that allows an association to opt out of the statutory election process if the board decides to hold an election to fill a board vacancy that was vacated before the expiration of a term. This bill also removes the provision that allowed an association to provide a different voting and election procedure from its bylaws by an affirmative vote of a majority of the total voting interests. This bill provides that votes allocated to units owned by the association may not be cast by proxy, ballot, or otherwise for any purpose.

### 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)<sup>11</sup>. The budget must include reserve accounts for capital expenditures and deferred maintenance in addition to annual operating expenses.

Reserve accounts and any interest accruing from them must remain in the reserve account or accounts and only be used for authorized reserve expenditures, unless their use for other purposes is approved in advance by a majority vote. Furthermore, before the turnover of control of an association by a developer to unit owners other than the developer, the developer-controlled association must not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all non-developer voting interests. The only voting interests which can vote on questions regarding waiving or reducing the funding of reserves or using existing reserve funds for the purposes other than purposes for which the reserves were intended are the voting interests of the units subject to the assessment to fund the reserves in question.

#### *Proposed Changes*

This bill provides that the association must prepare an annual budget of estimated revenue and expenses. The budget that was adopted the prior fiscal year will remain in effect until the association has adopted a new budget for the current fiscal year. The proposed budget or estimated revenues must be detailed and show the amounts budgeted by accounts and expense classification.

This bill provides that all ballots that involve questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than the purposes for which they were intended must contain a statement provided in the section on the ballot's face in bold letters and a font

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<sup>11</sup> 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.

size larger than the other used on the face of the ballot which states notifies the reader that this could result in unit owners having to pay for unanticipated assessments.

Furthermore, this bill provides that a vote for no reserves or a percentage of reserves must be made at the annual unit owner meeting. The division must adopt the form for the ballot and for no reserves and a percentage of reserves.

This bill provides that after turnover control, the association may in a catastrophic event use reserve funds for nonscheduled purposes to mitigate further damage to units or common elements or to make the condominium accessible for repairs.

### Maintenance

#### *Current Law*

Maintenance on the common elements is the responsibility of the association.<sup>12</sup>

#### *Proposed Changes*

This bill adds that the board must have the condominium buildings inspected every 5 years by a professional engineer or professional architect registered in the state for the purpose of determining whether the buildings are structurally and electrically safe and any immediate maintenance required as well as long-term maintenance necessary in the form of a long-term maintenance plan. The long-term maintenance plan must include an executive summary that must be distributed to all unit owners. Furthermore, the engineer or architect must provide a report that indicates the manner and type of inspecting that he or she used to form the basis for the report and give a description of any matters that require immediate action. The report will become an official record of the association and be provided to the members upon request.

### Display of Religious Decorations

#### *Current Law*

The First Amendment of the United States Constitution grants the freedoms of speech, religion, press, assembly, and petition. The First Amendment applies to the states through the Fourteenth Amendment, which prohibits states from depriving any person of life, liberty, or property without due process. Chapter 718, F.S., does not specifically provide for the use of religious decorations.

#### *Proposed Changes*

This bill provides that the board of administration may not adopt any rule or regulation which impairs the rights guaranteed by the First Amendment to the United States Constitution or s. 3, Art. I of the Florida Constitution, which includes but is not limited to, the free exercise of religion. Furthermore, this bill provides that no rules or regulations may conflict with the provision of ch. 718, F.S., or the condominium instruments. This bill also provides that a rule or regulation may not prohibit any reasonable accommodate for religious practices, including the attachment of religiously mandated objects to the front-door of a condominium unit.

### Prohibition against SLAPP suits

#### *Current Law*

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<sup>12</sup> Section 718.113(1), F.S.

Strategic Lawsuits Against Public Participation, "SLAPP" suits, occur when members are sued by individuals, business entities, or governmental entities because a parcel owner appears and or makes a presentation before a governmental entity on matters related to the association. Section 720.304, F.S., provides that SLAPP suits are prohibited against homeowners' associations in order to protect the right of parcel owners to

exercise their rights to instruct their representatives and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

### *Proposed Changes*

This bill creates s. 718.1224, F.S., which prohibits strategic lawsuits against public participation, otherwise known as SLAPP suits, against unit owners. This bill provides that governmental entities, business organizations, and individuals in Florida are prohibited from filing or causing to be filed through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against a condominium unit owner without merit and solely because such condominium unit owner has exercised the right to petition for redress of grievances on matters relating to the condominium association. Under this bill, a condominium unit owner sued in violation of this section has a right to an expeditious resolution. The court may award actual damages and as much as treble damages to a prevailing unit owner as well as attorney's fees and costs. A condominium association cannot expend association funds in prosecuting a SLAPP suit against a unit owner.

#### C. SECTION DIRECTORY:

Section 1 amends s. 718.111, F.S., relating to association insurance, official records, and financial reporting.

Section 2 amends s. 718.112, F.S., relating to bylaws of an association.

Section 3 amends s. 718.113, F.S., relating to maintenance and display of religious decorations.

Section 4 creates s. 718.1224, F.S., relating to prohibitions against SLAPP suits.

Section 5 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:

This bill appears to have a minimal positive fiscal impact on state government expenditures. See Fiscal Comments.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.



2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The division must adopt the form for the ballot required under this bill for no reserves and a percentage of reserves.

### 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 provides that an officer who destroys records is personally liable for appropriate criminal sanctions. However, the bill does not specify what the sanctions entail. It is possible that this could be interpreted as allowing judges to make their own decisions about what is an "appropriate" criminal sanction.

This bill provides that association records must be available to a unit owner at a location within the county in which the condominium property is located. However, some counties, such as Duval County, could be within one hour driving distance from one place to another within the county.

This bill provides that after turnover control, the association may use reserve funds for nonscheduled purposes in a catastrophic event. However, the bill does not define what constitutes a "catastrophic event."

D. STATEMENT OF THE SPONSOR

No Statement Submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A