

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 959 Residential Properties
SPONSOR(S): Civil Justice & Courts Policy Committee; Skidmore
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1270

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	9 Y, 2 N, As CS	Bond	De La Paz
2)	Insurance, Business & Financial Affairs Policy Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

This bill:

- Repeals the current law requirement that requires condominium unit owners purchase individual unit owner insurance coverage.
- Exempts certain condominium buildings from having to retrofit with alarm systems.
- Extends the current deadline for retrofitting with sprinklers in high-rise condominiums from 2014 to 2019.
- Allows a condominium association to collect assessments from a tenant of a delinquent unit owner.
- Provides that condominium associations and homeowners associations may deny use of the common areas to members who are more than 90 days delinquent.
- Repeals the requirement that high rise residential structures provide for emergency power for elevators and alarms.

This bill does not appear to have a fiscal impact on state or local governments. This bill may have substantial fiscal impacts on the private sector.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Condominium Unit Owner Insurance

Prior to 2004, the statutes did not provide for a split of responsibility between the insurance coverage required of the condominium association and individual unit owner property insurance that a unit owner may purchase. Thus, agents and companies had difficulty in underwriting, and competing claims and competing denials of coverage led to litigation following storms and other damage events. In the 2004 legislative session, s. 718.111(11), F.S., was amended to include a provision splitting insurance responsibilities between associations and owners.

In the 2008 legislative session, the insurance provisions were substantially amended. Included in the 2008 changes is a requirement that a unit owner purchase hazard insurance, that the unit owner name the association as an additional insured, and that an association may purchase insurance on behalf of a unit owner who has not purchased the required insurance and may require the unit owner to reimburse the association for the cost of the insurance.

This bill amends the insurance provisions of the condominium law, s. 718.111, F.S., to:

- Repeal the requirement that a unit owner must obtain insurance coverage on the unit owner's unit.
- Repeal the requirement that the association be named as an additional insured on an individual unit owner's coverage.
- Replace the inaccurate term "hazard insurance" with the term "property insurance."
- Remove the requirement that the board of administration of the association give specific notice to all members of its intent to discuss property insurance deductibles.
- Specify that the association insurance policy does not cover personal property that is located within the boundaries of a unit and serves that unit only.
- Repeal the requirement that condominium associations request from unit owners evidence of a currently effective insurance policy.

This bill also amends the insurance code, creating s. 627.714, F.S., to create a requirement that condominium owners' insurance policies include a minimum special assessment coverage of \$2,000, which special assessment coverage is for special assessments up to the association's deductible payable after an insured loss. The deductible may not exceed \$250. A unit owner's policy is excess coverage over the amount recoverable under any other policy covering the same property. The date of loss to the association is the date of loss applicable to the \$2,000 coverage, not the date of the special assessment.

Fire Alarm Systems

Section 633.0215(2), F.S., enacted in 1998, is a part of the insurance law. The act requires the State Fire Marshal to "adopt the National Fire Pamphlet 101, current editions, by reference." Pamphlet 101 is referred to as the Life Safety Code. Chapter 2000-141, L.O.F., amended the original effective date of the act from July 1, 1999 to July 1, 2001. Subsequently, ch. 2001-186, L.O.F., amended the effective date of the act to January 1, 2002. The State Fire Marshall complied with the statute and adopted the Life Safety Code. Chapter 9.6 of the Life Safety Code requires installation of fire alarm systems in new and existing multi-family structures.

This bill adds subsection (13) to s. 633.0215, F.S., to provide that a condominium, cooperative or multifamily residential building of less than four stories in height and that is constructed with exterior corridors is exempt from the requirement to install a manual fire alarm system.

Condominium Fire Sprinkler Retrofitting

Section 633.0215(2), F.S., enacted in the 1998 session, is a part of the insurance laws. This section requires the State Fire Marshal to "adopt the National Fire Protection Association's Standard 1, Fire Prevention Code . . . [and] the Life Safety Code, Pamphlet 101, current editions, by reference." The original effective date of the requirement to adopt was moved back by ch. 2000-141, L.O.F., and was moved back again by ch. 2001-186, L.O.F., to January 1, 2002. One of the many requirements of those fire prevention codes and standards is a requirement that certain existing multi-family structures be retrofitted with fire sprinkler systems within 12 years of enactment. Thus, one effect of s. 633.0215, F.S., as it currently is in law, is to require some older condominium buildings to complete installation of fire sprinkler systems (retrofit) by January 1, 2014, unless a change is made in the standards.

The state building code has required since 1994 that a multi-family structure three stories or taller must have installed sprinkler systems when first built. Prior to 1994, some local building codes required sprinklers upon initial construction of certain multi-family structures. Thus, the requirement to retrofit only applies to older condominium buildings.

Section 718.112(2)(l), F.S., provides that, notwithstanding the provisions of ch. 633, F.S., or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, a condominium association or unit owner is not obligated to retrofit the common elements or units of a residential condominium with a fire sprinkler system or other engineered life safety system in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting and engineered life safety system by the affirmative vote of two-thirds of all voting interests in the affected condominium.

However, a condominium association may not vote to forego the retrofitting with a fire sprinkler system of the common areas in a high-rise building. A high-rise building is defined as a building that is greater than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest story that can be occupied. For purposes of this exception, the term "common areas" means any enclosed hallway, corridor, lobby, stairwell, or entryway. In no event may the local authority having jurisdiction require completion of retrofitting of common areas with a sprinkler system before the end of 2014.

There are special voting, reporting, notice and recording requirements related to votes on retrofitting, including a requirement that a prospective purchaser or lessee of a condominium unit must be notified that the association has voted to forego retrofitting. Of the 74 associations that have reported to the DBPR that they have conducted a vote to forego retrofitting with sprinklers, the vote to forego failed only once and the remaining 73 have voted to forego retrofitting.¹

This bill provides that any condominium association may vote to extend the deadline for retrofitting the common areas of a high-rise condominium building with fire sprinklers or an engineered lifesafety system from the end of 2014 to the end of 2019. This bill also provides that a condominium building that was constructed with 1 and 1/2 hour or higher fire-rated walls separating condominium units is not required to retrofit the inside of units with fire alarm systems.

Condominium Association Assessments; Collection from Tenants

A condominium association is in effect a partnership between unit owners with a common interest in a condominium building or buildings. To operate, an association must collect regular assessments from the unit owners in order to pay for management, maintenance, insurance, and reserves for anticipated future major expenses. Section 718.116, F.S., provides for the assessment and collection of periodic and special assessments to fund the association. A unit owner is liable for all assessments that come due while he or she is the owner, and is jointly liable with past owners for any assessment owed by such previous owners. Of course, in an ordinary voluntary sale the buyer insists that all assessments be brought current through the date of sale, and an owner's title insurance company (if purchased) insures the buyer should the closing agent not properly see to payment of assessments through closing.

Foreclosure, an involuntary sale, is different. A unit owner who stops paying the mortgage will likely also stop paying the regular assessments. Should the condominium unit be sold to a third party at foreclosure sale, that buyer assumes responsibility for all of the past due assessments. The usual buyer at a foreclosure sale, however, is the lending institution. Section 718.116(1)(b), F.S., limits the liability for past due assessments of a first mortgage holder who is the winning bidder at the foreclosure sale to only being responsible to the association for the lesser of 6 months regular assessments or 1% of the original mortgage loan. Uncollectible past due assessments that result from this limitation are passed on to all of the unit holders through increased regular assessments and may be passed on to the unit owners by special assessment.

In the past, foreclosures were infrequent and were generally resolved within 6 months, leaving condominium associations with small infrequent manageable foreclosure losses. Recent economic downturns have led to significant numbers of condominium units in foreclosure which, coupled with typical foreclosure delays now reaching approximately 18 months, have led to significant financial troubles in condominium associations statewide.² Of great frustration to associations is situations where the unit is rented and the unit owner in default keeps the rents while the association is required to allow the tenant to use the common areas.³

¹ Fire system retrofitting summary reports provided to staff by DBPR, on file with staff of the Civil Justice and Courts Policy Committee.

² See, for instance: Iuspa-Abbott, *Condo Meltdown*, Daily Business Review, July 22, 2008; Bayles, *Help for Homeowners Associations*, HeraldTribune.com, October 6, 2008; Andron, *Condo Associations in Eye of Foreclosure Storm*, Miami Herald, April 21, 2008; 2008 *Florida Community Association Mortgage Foreclosure Survey*, April 16, 2008; Geffner, *Condo Foreclosures Hurt Others, Too*, MSNBC.com, August 29, 2008; Moody, *Banks Stick Unpaid Fees to Condos*, Florida Today, October 26, 2008; Owers, *Foreclosures Lead to Budget Problems for Associations*, South Florida Sun-Sentinel, February 24, 2009; *State of Distress: Florida Community Association Mortgage Foreclosures Spawn Crisis Within State's Condo and HOA Population*, February 24, 2008 (survey finding that nearly two-thirds of associations were impacted by foreclosure losses). All articles on file with committee staff.

³ See s. 718.106(4), F.S.

This bill amends s. 718.116, F.S., to give the association the right to demand that any tenant within a condominium unit that is delinquent pay future regular assessments to the association. The tenant may deduct such regular assessments paid to the association from the tenant's rent. The association may evict a tenant that refuses to pay. The landlord may not take action against a tenant for complying with an association demand for assessments. A tenant disclosure notice is created.

Homeowners Associations - Use of Common Areas

One of the privileges of membership in a homeowners' association is the right to use common areas and facilities. Those common areas and facilities may include clubhouses, recreational facilities, parks and playgrounds. Section 720.305(2), F.S., provides that, if allowed by the governing documents of an association, the association may suspend the right of an owner or tenant to use such facilities for a reasonable period of time.

Sections 720.308, and 720.3085, F.S., authorize a homeowners association to set and assess periodic assessments and special assessments, and to enforce payment through liens and legal action.

This bill creates s. 720.314, F.S. The bill defines "common area facilities" to include "any clubhouse, entertainment facility, exercise facility, swimming pool, tennis court, or other recreation area owned or maintained by a homeowners' association and provided for use by members of such association." This bill provides that a homeowners association may prohibit a member from using common area facilities if the member is 90 days or more delinquent in the payment of any fees owed to the association.

Condominium Associations - Use of Common Areas

One of the privileges of membership in a condominium association is the right to use common areas and facilities. Those common areas and facilities may include clubhouses, recreational facilities, parks and playgrounds. Current law does not allow a condominium association to deny a unit owner, or the unit owners guests or tenants, the use of such facilities.

Section 718.116, F.S., authorizes a condominium association to set and assess periodic assessments and special assessments, and to enforce payment through liens and legal action.

This bill creates s. 718.1165, F.S., to define "common area facilities" and to provide that a condominium association, multicondominium association, or master condominium association⁴ may prohibit a unit owner from using common area facilities if the unit owner is 90 days or more delinquent in the payment of any fees owed to the condominium association.

Condominium and Cooperative Association Emergency Power Supplies

Current law at s. 553.509(2), F.S. requires, as to any residential structure 75 feet in height or greater, the owner must provide a means to supply 5 days worth of electricity to the building fire alarm systems and to at least one elevator. Independent power can be either through an owned generator or through a contract to have a generator delivered during emergencies. The requirement applies to new construction and required retrofitting of existing structures. Current law also requires significant recurring costs, either for periodic maintenance and inspection of owned generators or for standby generator contracts. This bill amends s. 553.509(2), F.S., to repeal these requirements.

B. SECTION DIRECTORY:

Section 1 creates s. 627.714, F.S., amending the insurance code to create requirements for condominium unit owner policies.

⁴ Condominium associations often join together in multicondominium associations or through master condominium associations to provide such common and recreational facilities.

Section 2 amends s. 633.0215, F.S., providing an exception to the Florida Fire Prevention Code for certain buildings under 4 stories.

Section 3 amends s. 718.111, F.S., to amend condominium law related to unit owner insurance coverage.

Section 4 amends s. 718.112, F.S., extending a sprinkler requirement and providing that certain condominiums need not install alarm systems.

Section 5 amends s. 718.116, F.S., to provide a means by which a condominium association can collect from a tenant of a delinquent unit owner.

Section 6 creates s. 718.1165, F.S., to allow a condominium association to deny use of certain common areas by delinquent unit owners.

Section 7 creates s. 720.314, F.S., to allow a homeowners association to deny use of certain common areas by delinquent unit owners.

Section 8 amends s. 553.509, F.S., to repeal requirements for alternative elevator and alarm system power.

Section 9 provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill contains several provisions that would save condominium unit owners from expenses required by current law. This bill will have a negative fiscal impact on vendors who supply the materials and labor necessary to comply with current law. Specifically, the sections in this bill that have a direct economic impact on the private sector are:

- Section 2 creates an exception to a current law requirement for alarm systems in certain condominium buildings under 4 stories in height.
- Section 3 repeals the current law requirement that all condominium unit owners purchase an insurance policy.

- Section 4 contains provisions extending requirements for retrofitting of condominiums with sprinklers and engineered lifesafety systems, and provides that certain condominiums need not install fire alarm systems inside of units.
- Section 8 of the bill repeals the requirement that a condominium association operating a high-rise building provide a power supply for at least 5 days operation of fire alarm systems and an elevator during an emergency situation (this change also applies to cooperative associations).

D. FISCAL COMMENTS:

None.

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:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 22, 2010, the Civil Justice & Courts Policy Committee adopted 6 amendments to this bill. The amendments:

- Added provisions related to condominium unit owner coverage.
- The bill provided that certain one and two story buildings with exterior corridors are exempt from an alarm requirement. One amendment changed this provision to apply to buildings under 4 stories in height.
- Added provisions allowing a condominium association to collect assessments from a tenant when the unit owner is delinquent.
- Corrected provisions on denying access to common area facilities to delinquent owners of condominiums and homes in a homeowners association.
- Removed provisions that would have increased lender liability after foreclosure.
- Corrected language related to exemption from sprinklers for certain condominiums where there are rated fire walls between units.

The bill was then reported favorably as a committee substitute.