

WHITE PAPER

PROPOSAL OF THE CONDOMINIUM AND PLANNED DEVELOPMENT COMMITTEE FOR CHANGES TO CHAPTER 718, 719 AND 720

I. SUMMARY

The Condominium Act, the first community association chapter of Florida Statutes, was enacted in 1963, and has seen many changes since enactment. However, new challenges to community associations have outstripped outdated laws. These challenges include methods of election, new community designs, less volunteerism and concern over privacy rights. In addition, changing market forces have altered the economy and well-being of communities.

In response to the new issues facing communities, during the 2009 Legislative session many proposals were introduced, and many incorporated into Senate Bill 880, to amend the Condominium, Cooperative and Homeowners' Association Acts; however, that bill did not become law. Anticipating Legislators desire to address the issues that remain, the structure of Senate Bill 880 was utilized as a vehicle to incorporate lessons learned and suggestions from those who represent the various facets of community associations, property owners to developers to associations. A vast majority of the provisions contained in Senate Bill 880 remain intact and without modification. Certain modifications and deletions were made to various provisions to clarify language which was unclear, contradictory or believed to be unworkable.

II. CURRENT SITUATION

Chapters 718, 719 and 720 presently contain a variety of provisions which are ambiguous or unclear. Each year, the Florida legislature considers a variety of proposals to improve or correct numerous issues in the law, and this proposal is designed to clarify or improve upon the existing law. Further, the current economic distress of the residential real estate market has highlighted ambiguities in the Chapter 718 related to the purchasers or lenders acquiring unsold condominium units in a bulk purchase, and this proposal serves to create provisions of a limited duration to enable distressed condominium projects to be rehabilitated when units are conveyed to a bulk purchaser, with or without an assignment of developer rights.

II. SECTION-BY-SECTION ANALYSIS

The following is a listing of the specific changes to Chapters 718, 719 and 720 if the proposal is enacted:

A. Section 718.110(13)

Current Situation: The language concerning the ability to amend the declaration of condominium pertaining to rental rights does not provide

sufficient protection for existing unit owners.

Effect of Proposed Changes: Amendments to the declaration of condominium which would restrict the rights of a unit owner from renting their units or which would alter the duration of the rental term or the number of times a unit owner can rent a unit during a specific period will only apply to existing unit owners who consent to the amendment.

B. Section 718.111(12)

Current Situation:

(a) Clarification is needed to prevent liability for a person who knowingly or intentionally destroys or defaces accounting records after the time that the records are required to be maintained pursuant to Chapter 718 (i.e., there is no link with the time frame for maintaining the records).

(b) Clarification is needed as to when an association will have liability for the use or misuse of information obtained under the provisions of Chapter 718.

(c) Clarification is needed to prevent liability for a person who knowingly or intentionally destroys or defaces association official records after the time that the records are required to be maintained pursuant to Chapter 718 (i.e., there is no link with the time frame for maintaining the records) or with an intent to cause harm.

(d) Clarification is needed as to the description of records that are or are not accessible to unit owners.

(e) Clarification is needed as to the method of delivery to the association of a unit owner's request for official records.

Effect of Proposed Changes:

(a) There will now be liability when a person knowingly or intentionally destroys or defaces accounting records required to be created and maintained only for the period of time when such records are required to be maintained in accordance with other provisions of Chapter 718.

(b) The association shall not be responsible for the use or misuse of information obtained under Chapter 718 unless the association has an affirmative obligation not to disclose the information.

(c) There will now be liability when a person knowingly or intentionally destroys or defaces association official accounting records required to be created and maintained only for the period of time when such records are required to be maintained in accordance with other provisions of Chapter 718, or if the person knowingly fails to create or maintain accounting records with an intent to cause harm to the association or one or more of its members.

(d) Unit owners will not be given access to electronic mailing addresses; telephone numbers; emergency contact information; any addresses for a unit owner other than as provided by association notice requirements; personnel records of association's employees (including, but not limited to, disciplinary, payroll, health and insurance records); any electronic security

measure that is used by the association to safeguard data (including passwords); and the underlying software used by the association to generate data. Unit owners are to be given access to the name, unit designation, mailing address, and property address.

(e) A unit owner is required to submit a request for official records by certified mail, return receipt requested, or receipted commercial delivery to the association's mailing address.

C. Section 718.111(13)

Current Situation: Clarification is needed as to the standards for financial reporting by condominium associations and to require the Division to promulgate rules in such regard.

Effect of Proposed Changes: Specific provisions will be deleted as to requirements for reporting on reserves, and the Division will be required to promulgate rules containing standards for presenting a summary of association reserves, including, but not limited to, a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. Such reporting shall not be applicable to reserves funded via the pooling method.

D. Section 718.112(2)

Current Situation:

(a) Clarification is needed when there are insufficient candidates to serve on the board of administration.

(b) Clarification is needed where coowners of a unit are permitted to each serve on the board of administration.

(c) Clarification is needed as to the eligibility requirements of a candidate for election to the board of administration.

(d) Clarification is needed as to the requirements for unit owners that are elected to the board of administration to certify their understanding of the association documents or that they have received sufficient educational guidance from the Division.

(e) Clarification is needed that any director or officer who has failed to pay any monetary obligation due to the association (i.e., not just an assessment obligation) for 90 days is deemed to have abandoned their office.

(f) Clarification is needed as to the basis for determining director or officer offenses that will result in suspension from office.

(g) Clarification is needed that election and eligibility procedures and requirements should not be applicable to an association which governs a timeshare condominium (the current provisions are almost impossible to comply with because of the nature of the timeshare, the multitude of owners and the extreme cost associated with the election procedures).

Effect of Proposed Changes:

(a) Where there is an insufficient number of candidates to serve on the board of administration, directors whose terms are expiring can be reappointed to serve without an election.

(b) In a condominium association of more than 10 units, coowners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit and are not co-occupants of a unit or unless there are not enough owners to fill the vacancies on the board.

(c) A candidate for election to the board of administration shall be required to have satisfied all eligibility requirements contained in the bylaws and have paid all outstanding monetary obligations due to the association (failure to do so shall result in the candidate not being listed on the ballot).

(d) Within 90 days after being elected, a newly-elected director must certify in writing to the association that he or she has read the declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, the newly elected director may submit a certificate of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider. Failure to timely file the written certification or educational certificate will serve to suspend the director until he or she complies with the requirements.

(e) A director or officer more than 90 days delinquent in the payment of any monetary obligation due to the association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

(f) A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property shall be suspended from office.

(g) An association which governs a timeshare condominium is not bound by the provisions pertaining to election of directors or eligibility requirements for service on the board.

E. Section 718.115

Current Situation: Clarification is needed as to certain costs that constitute common expenses. Current language only references cable television agreements, and this concept needs to be expanded to cover internet and video services as well.

Effect of Proposed Changes: Contracts for communications services, information services or internet or video services are now specifically included in the concept of common expenses.

F. Section 718.116

Current Situation:

(a) Clarification is needed as to the amount that is covered under the association's lien for nonpayment of assessments and the charges that an association can levy against a unit owner for collection services and issuance of estoppel certificates

(b) Rights need to be created for an association to collect monies from tenants of units if the unit owner fails to pay any monetary obligation due to the association.

Effect of Proposed Changes:

(a) The cost secured by the association's claim of lien with regard to collection letters or any other collection efforts by management companies or licensed managers as to any delinquent installment of an assessment may not exceed \$75. In addition, if the management company or licensed property manager prepares an estoppel certificate required by Chapter 718, it can charge an additional fee of up to \$75 for the issuance of such certificate.

(b) The association is authorized to demand that a tenant pay to the association the future regular assessments related to the condominium unit so as to satisfy any outstanding monetary obligations due to the association in connection with the unit. The tenant will receive a credit from the landlord against rent for any amounts paid to the association. The tenant is required to continue payment until the association releases the tenant or the tenancy ends. The tenant is not required to pay monetary obligations if the tenant provides written evidence to the association of prepaid rent payments made to the landlord, up to the amount of the prepaid rent. The association has certain notice requirements. The tenant is not liable for increases in the amount of any monetary obligations due to the association unless the tenant was notified in writing of the increase not less than ten days prior to the date on which the rent payment was due. The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The association shall, upon request, provide the tenant with written receipts for payments made. The association may issue notices under s. 83.56 and may sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 if the tenant fails to pay an assessment. However, the association is not otherwise considered a landlord under chapter 83 and specifically has no duties under s. 83.51. The tenant does not, by virtue of payment of assessments, have any of the rights of a unit owner to vote in any election or to examine the books and records of the association. A court may supersede the effect of this subsection by appointing a receiver.

G. Section 718.301

Current Situation: Clarification is needed that transfer of control is not triggered in a receivership circumstance when a court determines that turnover is not in the best interest of the association or its members.

Effect of Proposed Changes: Turnover will occur when a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless an interested party, including the holder of a mortgage on a unit in the condominium, petitions the court within such 30 day period that transfer of control would be detrimental to the association or its members.

H. Section 718.303

Current Situation: Clarification is needed that the association has the right to suspend an owner's right of enjoyment of the common elements (other than as may be necessary for legal ingress and egress to and from the unit, for necessary services or for the use of limited common elements) in the event of nonpayment of monetary obligations due to the association.

Effect of Proposed Changes: If a unit owner is delinquent for more than 90 days in the payment of any monetary obligation due to the association, the association may suspend, until paid, the right of a unit owner or a unit's occupant, tenant, licensee, or invitee to use common elements, common facilities, or any other association property. This does not apply to limited common elements intended to be used only by that unit, common elements that must be used to access the unit, electricity, water, gas and sanitary sewer services provided to the unit, parking spaces, or elevators.

I. Section 719.104

Current Situation:

(a) Clarification is needed as to the method of delivery to the association of a unit owner's request for official records.

(b) Clarification is needed as to the description of records that are or are not accessible to unit owners.

Effect of Proposed Changes:

(a) A unit owner is required to submit a request for official records by certified mail, return receipt requested, or receipted commercial delivery to the association's mailing address.

(b) Unit owners will not be given access to social security numbers; driver's license numbers; credit card numbers; electronic mailing addresses; telephone numbers; emergency contact information; any addresses for a unit owner other than as provided by association notice requirements; personnel records of association's employees (including, but not limited to, disciplinary, payroll, health and insurance records); any electronic security measure that is used by the association to safeguard data (including passwords); and the underlying software used by the association to generate data. Unit owners are to be given access to the name, unit designation, mailing address, and property address.

J. Section 719.108

Current Situation:

(a) Clarification is needed as to the amount that is covered under the association's lien for nonpayment of assessments and the charges that an association can levy against a cooperative parcel owner for collection services and issuance of estoppel certificates

(b) Rights need to be created for an association to collect monies from tenants of units if the unit owner fails to pay any monetary obligation due to the association.

Effect of Proposed Changes:

(a) The cost secured by the association's claim of lien with regard to collection letters or any other collection efforts by management companies or licensed managers as to any delinquent installment of an assessment may not exceed \$75. In addition, if the management company or licensed property manager prepares an estoppel certificate required by Chapter 718, it can charge an additional fee of up to \$75 for the issuance of such certificate.

(b) The association is authorized to demand that a tenant pay to the association the future regular assessments related to the condominium unit so as to satisfy any outstanding monetary obligations due to the association in connection with the unit. The tenant will receive a credit from the landlord against rent for any amounts paid to the association. The tenant is required to continue payment until the association releases the tenant or the tenancy ends. The tenant is not required to pay monetary obligations if the tenant provides written evidence to the association of prepaid rent payments made to the landlord, up to the amount of the prepaid rent. The association has certain notice requirements. The tenant is not liable for increases in the amount of any monetary obligations due to the association unless the tenant was notified in writing of the increase not less than ten days prior to the date on which the rent payment was due. The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The association shall, upon request, provide the tenant with written receipts for payments made. The association may issue notices under s. 83.56 and may sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 if the tenant fails to pay an assessment. However, the association is not otherwise considered a landlord under chapter 83 and specifically has no duties under s. 83.51. The tenant does not, by virtue of payment of assessments, have any of the rights of a unit owner to vote in any election or to examine the books and records of the association. A court may supersede the effect of this subsection by appointing a receiver.

K. Section 720.303

Current Situation:

(a) Clarification is needed that a board of administration meeting to

discuss proposed or pending litigation or for discussing personnel matters is not open to members.

(b) Clarification is needed as to charges for copies of association records as requested by a homeowner, so as to prevent homeowner abuse and waste of association personnel time.

(c) Clarification is needed as to the description of records that are or are not accessible to unit owners.

(d) Clarification is needed as to homeowners association budgeting and disclosure of reserve accounts.

(e) Disclosures are needed in the financial reports pertaining to reserves.

(f) Clarification is needed on the ability of a director to receive compensation.

(g) Clarification is needed as to the method of delivery to the association of a unit owner's request for official records.

Effect of Proposed Changes:

(a) Meetings between the board or a committee and the association's attorney to discuss proposed or pending litigation, or meetings of the board held for the purpose of discussing personnel matters shall not be open to the members other than the directors.

(b) The association is entitled to charge the actual cost of copying, including any reasonable costs involving personnel fees and charges at an hourly rate for vendor or employee time to cover administrative costs to the vendor or the association.

(c) Parcel owners will not be given access to social security numbers; driver's license numbers; credit card numbers; electronic mailing addresses; telephone numbers; emergency contact information; any addresses for a parcel owner other than as provided by association notice requirements; personnel records of association's employees (including, but not limited to, disciplinary, payroll, health and insurance records); any electronic security measure that is used by the association to safeguard data (including passwords); and the underlying software used by the association to generate data. Parcel owners are to be given access to the name, unit designation, mailing address, and property address.

(d) The association budget must disclose any reserves that have been collected, and the funding requirement for reserves is limited to the extent that there is a limitation on the increase in assessments in the governing documents. There is no preclusion from terminating a reserve account, which requires approval of a majority of the voting interests of the association.

(e) Specific disclosures are now provided for inclusion in the association financial reports concerning the funding and existence of reserves.

(f) A director, officer, or committee member of the association may not receive any salary or compensation from the association for the performance of duties as a director, officer, or committee member and may not in any other way benefit financially from service to the association. However, this does not preclude: (1) participation by such

person in a financial benefit accruing to all or a significant number of members as a result of actions lawfully taken by the board or a committee of which he or she is a member, including, but not limited to, routine maintenance, repair, or replacement of community assets; (2) reimbursement for out-of-pocket expenses incurred by such person on behalf of the association, subject to approval in accordance with procedures established by the association's governing documents or, in the absence of such procedures, in accordance with an approval process established by the board; (3) any recovery of insurance proceeds derived from a policy of insurance maintained by the association for the benefit of its members; (4) any fee or compensation authorized in the governing documents; (5) any fee or compensation authorized in advance by a vote of a majority of the voting interests voting in person or by proxy at a meeting of the members; or (6) a developer or its representative from serving as a director, officer, or committee member of the association and benefiting financially from service to the association.

(g) A parcel owner is required to submit a request for official records by certified mail, return receipt requested, or receipted commercial delivery to the association's mailing address.

L. Section 720.304

Current Situation: Clarification is needed as to the requirements imposed for the installation of a flagpole on a lot.

Effect of Proposed Changes: A flagpole and display are subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, noise and lighting ordinances in the county or municipality in which the flag pole is erected, and all setback and locational criteria contained within the covenants, restrictions, bylaws, rules, or requirements of the association.

M. Section 720.305

Current Situation:

(a) Clarification is needed that the association has the right to suspend an owner's right of enjoyment of the common property (other than as may be necessary for legal ingress and egress to and from the unit or for the use of limited common elements) in the event of nonpayment of monetary obligations due to the association.

(b) Clarification is needed to permit certain fines to become liens.

Effect of Proposed Changes:

(a) If a parcel owner is delinquent for more than 90 days in the payment of any monetary obligation due to the association, the association may suspend, until paid, the right of the parcel owner or the parcel's occupant, tenant, licensee, or invitee to use common areas, common facilities, or any other association property. This does not apply to those portions of

the common areas intended to be used only by that parcel, common areas that must be used to access the parcel, electricity, water, gas and sanitary sewer services provided to the parcel, common area parking spaces, or elevators.

(b) A fine of less than \$1,000 shall not become a lien against the parcel, and the imposition of a fine or suspension requires the association to provide written notice, by mail or hand delivery, to the parcel owner, and, if applicable, to the parcel's occupant, tenant, licensee or invitee.

N. Section 720.306

Current Situation: Clarification is needed as to the ability to vote by secret ballot and proxies.

Effect of Proposed Changes: Voting can occur via secret ballot employing an election process similar to that of Section 718.112 pertaining to condominiums.

O. Section 720.3085

Current Situation: Rights need to be created for an association to collect monies from a tenant of a parcel if the parcel owner fails to pay any monetary obligation due to the association.

Effect of Proposed Changes: The association is authorized to demand that a tenant pay to the association the future regular assessments related to the condominium parcel so as to satisfy any outstanding monetary obligations due to the association in connection with the parcel. The tenant will receive a credit from the landlord against rent for any amounts paid to the association. The tenant is required to continue payment until the association releases the tenant or the tenancy ends. The tenant is not required to pay monetary obligations if the tenant provides written evidence to the association of prepaid rent payments made to the landlord, up to the amount of the prepaid rent. The association has certain notice requirements. The tenant is not liable for increases in the amount of any monetary obligations due to the association unless the tenant was notified in writing of the increase not less than ten days prior to the date on which the rent payment was due. The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The association shall, upon request, provide the tenant with written receipts for payments made. The association may issue notices under s. 83.56 and may sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 if the tenant fails to pay an assessment. However, the association is not otherwise considered a landlord under chapter 83 and specifically has no duties under s. 83.51. The tenant does not, by virtue of payment of assessments, have any of the rights of a parcel owner to vote in any election or to examine the books and records of the association. A court may supersede

the effect of this subsection by appointing a receiver.

P. Section 720.30851

Current Situation: Clarification is needed as to the amount an association may charge for the issuance of an estoppel certificate.

Effect of Proposed Changes: An association may charge a fee up to \$150 for the issuance of an estoppel certificate.

Q. Section 720.31

Current Situation: Clarification is needed as to the ability of a homeowners association to acquire leaseholds, membership and other possessory use interests in lands or facilities such as country clubs, golf courses, marinas, submerged lands, parking areas, conservation and mitigation easements and areas, and other recreational facilities

Effect of Proposed Changes: The association is now empowered to enter into such agreements. There are requirements for description of these interests in the declaration if occurring prior to recording. Subsequent to recording, there must be authorizing language in the declaration to such effect, or else a 75% approval of the voting interests is required.

R. A new Part VII of Chapter 718, entitled the “Distressed Condominium Relief Act,” is to be created:

Section 718.701: This section creates the title for Part VII.

Section 718.702: This section provides legislative findings and legislative intent. The statement of legislative intent indicates it is public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums.

Section 718.703: This section creates definitions of “bulk assignee” and “bulk buyer.”

Section 718.704: This section creates provisions pertaining to the assignment and assumption of developer rights and provides different exceptions for a bulk assignee and a bulk buyer.

Section 718.705: This section creates provisions related to the transfer of control of the condominium association’s board of administration, the ability of bulk assignees and bulk buyers to elect directors, and the delivery of transfer materials by a bulk assignee.

Section 718.706: This section provides specific provisions to be contained in offering materials utilized by bulk assignees or bulk buyers to offer units for sale or lease for a term of more than 5 years.

Section 718.707: This section provides a time limitation for classification as a bulk assignee or bulk buyer.

Section 718.708: This section provides that an assignment of developer rights does not release the developer from any liabilities under the condominium declaration or Chapter 718. The developer's liability is not limited for claims brought by unit owners, bulk assignees, or bulk buyers for violations of Chapter 718.

- S. As a result of the creation of Part VII, Section 718.103(16) has been modified to exclude a bulk assignee or a bulk buyer from the scope of the defined term "developer."

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state or local governments.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The passage of these proposals will enable the improve operation of condominium, cooperative and homeowners associations, thereby saving money for the residents in these communities.

VI. CONSTITUTIONAL ISSUES

There are no known constitutional issues resulting from this proposal.

V. OTHER INTERESTED PARTIES

There are no other parties that are known to have an interest in this proposal.