

# FINAL REPORT



**ADVISORY COUNCIL ON CONDOMINIUMS  
JANUARY - DECEMBER 2006**

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## INTRODUCTION

Created by the Florida Legislature in 2004, the Condominium Advisory Council consists of seven members. The implementing legislation, Chapter 2004-345, Laws of Florida, provides that two members shall be appointed by the President of the Senate, two members by the Speaker of the House of Representatives, and three members by the Governor. At least one member appointed by the Governor is to represent timeshare condominiums. The members are appointed for two year terms, except that one of the members initially appointed by the Governor, the President of the Senate and the Speaker of the House of Representatives shall each serve one year terms. The Director of the Division of Florida Land Sales, Condominiums, and Mobile Homes serves as an ex officio nonvoting member. The Council is located within the Division for administrative purposes. Carol Windham, Government Analyst I, serves as administrative support staff for the Council.

The Council meets at the call of the chair and the vice chair and such other officers as it may deem advisable. A majority of the Council constitutes a quorum and action may be taken by a vote of a majority of the voting members who are present at a meeting where there is a quorum.

The functions of the Advisory Council are to:

- Receive, from the public, input regarding issues of concern with respect to condominiums and recommendations for changes in condominium law. The issues that the Council shall consider include, but are not limited to, the rights and responsibilities of the unit owners in relation to the rights and responsibilities of the association.
- Review, evaluate, and advise the Division concerning revisions and adoption of rules affecting condominiums.
- Recommend improvements, if needed, in the education programs offered by the Division.

## **CONDOMINIUM ADVISORY COUNCIL MEMBERS**

JOSEPH ADAMS, Attorney -- Appointed by the Speaker of the House

MICHAEL ANDREW, Attorney – Appointed by the Governor

MICHAEL COCHRAN, Director, Division of Florida Land Sales,  
Condominiums, and Mobile Homes (ex officio)

PETER DUNBAR, Attorney – Appointed by the Senate President

ROBERT FOWNER, CAM – Appointed by the Speaker of the House

GEORGE GEISLER, Consumer Advocate – Appointed by the Governor

KAREN TYSENN, Consumer Advocate – Appointed by the Governor

PAUL WEAN, Attorney – Appointed by the Senate President

Mr. Dunbar served as Council Chair during 2006. Mr. Andrew will serve as Chair during 2007.

## EXECUTIVE SUMMARY

Consistent with its charge to gather public input, the Council conducted eight public meetings throughout Florida between January 30, 2006, and November 3, 2006. The Council conducted meetings in Tampa, Tallahassee, Daytona Beach, Cocoa Beach, Jacksonville Beach, West Palm Beach and Orlando. The Council heard public input at the meetings in Cocoa Beach, Jacksonville Beach and in West Palm Beach.

As reported in our 2005 report the majority of the public input continues to be consistent as to the types of issues involved with everyday condominium living. Those who voiced complaints generally had issues with the way their elections were conducted, access to records, problems working with their board of directors, or financial issues. However, these complaints viewed in their totality support our previous findings that, as a general matter, that there do not appear to be widespread problems with respect to the quality of condominium living in Florida. As we stated in 2005, with over 20,000 residential condominium associations, there will always be those unit owners who didn't get access to records in a timely manner, an election which malfunctions, or a board that doesn't do a good job managing the condominium's fiscal affairs. However, the Council continues to believe such occurrences are the exception and not the rule.

In the context of the Council's receipt of public testimony and subsequent discussions, the Council has several legislative recommendations. The most important of these concern post turnover regulatory jurisdiction of condominiums, condominium conversions, the role of the Condominium Ombudsman, and expanding the condominium education opportunities. In sum, the laws regarding condominium conversions need to be strengthened to protect purchasers, expand the list of improvements for which a developer may choose to fund converter reserves, clarify the role of the Ombudsman emphasizing his or her role as a neutral liaison rather than an enforcer of condominium law, and expand the opportunities for education for unit owners and board members. Existing resources within the Division's Bureau of Compliance could be better utilized by providing unit owner controlled associations with education and alternative dispute resolution instead of investigating complaints. Having both parties present in a proceeding under the supervision of a mediator or arbitrator to argue the merits of their claims offers a much better opportunity for customer satisfaction than the more coercive investigative approach which places the Division in the position of policeman, judge, and jury. The Council also recommends that the legislation it recommended in 2005, to deal with the authority of associations in post-catastrophic situations, be considered.

Current drafts of legislation being recommended by the Council are found in the Appendix.

## **RECOMMENDED LEGISLATIVE CHANGES**

The Council has taken a position on the following provisions of the laws governing condominiums. Additionally the Council determined that it should comment on current legislative proposals that did not originate in the Council.

- 1) The Council recommends that the division's regulatory jurisdiction regarding post-turnover associations be limited.
- 2) The Council recommends clarifying the role of the Condominium Ombudsman.
- 3) The Council drafted and recommends adoption of amendments to the laws regarding condominiums created by conversion. The amendments put forth by the Council have been sponsored by Senator Margolis under Senate Bill 396.
- 4) The Council approves the emergency powers legislation from last year.
- 5) The Council supports the termination bill as originally filed in the 2006 regular session.

## **PUBLIC COMMENTS**

Public comments were received at the meetings conducted on January 30, 2006, May 19, 2006, May 20, 2006, July 27, 2006, and September 15, 2006. The comments have been topically organized and presented along with an indication as to the speaker's background and the date at which the comments were presented.

### **Assessments / Foreclosure**

Richard DeBoest; local attorney. Discussed SB586 by Siplin (foreclosure bill). Stated that he has filed 500 foreclosures in last ten years; only one went to court and was actually foreclosed. Felt that this is an anti-association bill, and would have devastating effect on small associations, making it very difficult for association to collect delinquent assessments. Also felt that foreclosure actions do not get turned over to an attorney until the homeowner has been contacted numerous times.

### **Board of Administration / Management**

Sharon Cail: unit owner, Sebastian Harbor in St. Augustine. Doesn't think division helps unit owners. Went to court, mediation, and arbitration. Difficult for unit owners to have money for mediation or arbitration. They were awarded attorneys fees but haven't

received any. Went to education class in St. Augustine; felt it educated board members to get around the laws. Felt records must be kept within reasonable distance. Her board is controlled by one person who owns majority of units. Board brought in their friends to sit on board. Wants rule that only owners can sit on board. Felt that the Council doesn't understand that there are a large number of complexes where boards know the laws and don't care.

Anthony Longo; Windward East Condo; 97 units. Had questions relating to security monitoring of property. Asked if any statute describes association liability or what type of monitoring is allowed; are board or owners allowed to monitor; any potential liability related to this. Discussion ensued regarding potential material alteration; a board should look to its documents and seek counsel. Also discussed hurricane shutters and sliders at his association.

Sandra Mickelson; Greenwood Village. Stated that many legislators know nothing about condominiums. Also stated that the legislature wants to put burden on potential board members in terms of members' financial records or mandatory education. Would be impossible to get new board members. Also did not like past legislation regarding rental restrictions. Felt that something better needs to be defined. Also stated that many issues addressed in legislature relate to a condominium as a single building; hers is 25 acres and 34 buildings. Stated that Citizen insures each building individually and it becomes difficult to get payments for damages; the association has come up short because of depreciation and replacement values.

Robert Bittenbach; unit owner. Discussed association rules; felt that some take advantage and harass; but felt board is only concerned about good of association. Some people have single agendas. Stated that it is hard to get everyone to understand issues and vote. Felt there should be more consideration of seniors in communities. Stated that many owners purchased their units years ago and could not anticipate today's costs for insurance and assessments.

Arthur Nolan; unit owner at Beach Villas and Ocean Walk. Stated that he is trying to figure out how get around a rule that a board adopts. Thinks that many snowbird residents would disagree with new rules. Stated that owners can't get board out until next January. Doesn't like recall as extreme measure; likes the board in general, but not this one decision. Felt the statute should be changed to provide for a referendum to change something that the board has passed; 10 people can initiate a referendum.

Gary Ritterstein; Vice President of SCCA. Stated that primary issue is communication; many condominiums do not have websites or email bulletin boards. Asked how, in times of emergencies, can we facilitate mass communication.

Annie Ward; unit owner; Towers Condominium. Long time condominium owner; discussed possible need for a board to update the condominium documents.

## **Conversions**

Zachary Kobrin, on behalf of Senator Gwen Margolis, provided comments on the draft language addressing sections 718.616 and 718.618, FS (condominium conversions). Was pleased with the council's efforts so far, but wanted to raise some concerns: need to create a more streamlined disclosure report; who decides the value of a warranty; what happens when the developer no longer has assets.

Lynda Aycock (submitted written materials to Council); attorney. Represents associations, unit owners, property managers, etc. Good viewpoint of problems. Sees problems the most in conversions and the lack of specificity in the rules. Doesn't feel unit owners can rely on reports. Seller of commercial building (apartments) doesn't have to disclose same type problems. Wants rule to tell inspectors what to review, developers should disclose, what owners should ask. Discussion ensued with Ms. Aycock regarding conversions and inspection reports. Speaks regarding filing process and reports on new construction. In a conversion, there may be a year or 2 and information can be much older.

## **Insurance**

Karen Williams, unit owner. Discussed specific situation at her condominium regarding insurance. Felt that the association was paying too much for insurance because they were paying for flood coverage although flood zone had been incorrectly assigned. Ms. Williams went to FEMA and asked for changes; undertook much work to correct this error and now board refuses to reimburse her for the expenses she incurred.

Alice Levin; unit owner in Jax Beach. Heavy insurance increases are coming in 2007. Insurance company is dropping them and have referred to their agents; 179% increase on one policy w/o coverage amount increasing. Mid-rise building, 25 units, 20 yrs old, dealing with usual maintenance. Asked if owners take vote to change declaration so that they have less than 100% coverage, and get a quote w/in 90 days, willing to run a certain risk, if the unit owners vote to do so --- is there any impact or implications? Discussion ensued regarding fiduciary duty of board; association's responsibility to maintain coverage. Chair Dunbar would like to add insurance issue to subjects covered in Councils' report this year (insurance, conversion and jurisdiction).

## **Division**

Marilyn O'Connell; Rockpoint Condominium Association, 112 units. Asked if every complaint sent to state is treated the same. Chair Dunbar responded yes. Ms. O'Connell felt that there should be something in place with the state for habitual complainers; felt they should be treated differently than legitimate complainers. Also asked if there is any recourse for someone who stands up at board and tells a lie or makes harassing comments. Discussion ensued regarding the board president presiding at the meetings and discussing any harassment with legal counsel.

Roy Hyatt; President of 115 River Drive in Cocoa; 86 units. Discussed insurance and reserves; also discussed challenging division when someone has an issue with an investigation. Thinks that many board members are in violation of rules from ignorance. Felt that all unit owners and boards are in a crisis situation regarding insurance costs and coverage. Stated that he can't imagine operating without a reserve system and felt the best way to manage insurance is put in pooled reserve so that you can meet deductible. Dealt with a "recreational complainer" in the past, but had positive experience with the division and Investigator Jason Brandolini. Wanted to approach the general circumstance issue where there is a ruling that a board disagrees with. Stated that the division compliance officer is judge and jury and it's not feasible economically to challenge. Not negative towards the bureau, but felt it is a systemic issue. Chair Dunbar stated that the Council is recommending a change for the procedure that may be helpful as an alternative to current experience.

## **Education**

Harry Charles; President of Space Coast Condominium Association (SCCA). Spoke regarding educating board members. Felt that education should include basic courses, like CAI presents. Also stated that people forget what they've heard in courses and education should be augmented by procedures on websites, CDs, such as the division's. Does not want to see the division's responsibility for education reduced. Division should continue developing the CD-ROM into a more useful program; improve their website to make areas more navigatable. Stated that manpower at division has been reduced 40% while workload has increased 24%. Felt that as many as 50% of associations that he's spoken to don't have reserves. Would like to promote associations having reserves without removing their freedom to waive reserves. Would also like to recommend that Council consider changing law to require periodic evaluations to provide data to association to be used for making decisions on reserves, maintenance, etc. Data will help in short & long term funding plans. Also discussed hurricane shutter replacements.

Joanne Miller; unit owner and board member. Stated that owners and board members need education; she is the only board member who attends the SCCA meetings and the CAI classes.

Glen Cook; unit owner. Asked for education for condo boards. Has called Ombudsman and sent complaint to division; was complimentary of division investigator Jeff Ewaldt. Stated that many owners are not Florida residents and are not involved; more education is needed. Boards don't attract educated board members. Also felt that CAMs should advise only and should report directly to association. Stated that CAI courses are worthwhile. Division should update budget and reserves manual; common elements and limited common elements should be separated in budget & financial statements.

## **Developers**

James Lapinski; unit owner, St. Croix Condominium; 59 units. Felt that there were many defects in the construction of his condominium. Discussed possible recourse for unit owners against the developer. Council members suggested he obtain a professional engineering report.

## **Elections / Voting**

Michelle Huntington; unit owner at condominium with 112 units, designated representative of her fellow owners. Stated that DBPR recently made her association hold new election because of a complaint from unit owner alleging that ballots were counted in adjoining room. Stated that complainant was elected using the same long-standing procedure but was recalled thereafter; she thinks this is why he is complaining. Stated that their election was conducted in good faith; their attorney and CAM were present. Asked that Council change statute or explain more clearly what "in the presence of" means for future situations. Discussion ensued with Council regarding conducting elections.

## **Financial Reporting**

Lewis Haridopolos; 224 units, Merritt Island. Asked to discuss budgets; felt that budgets are hardly ever seen or reviewed by owners. When he was on board, the board did monthly audit and felt it was more useful than a year-end audit. Asked that Council consider establishment of supervisory council similar to credit unions to assist with audits.

## **General Comments**

Michael Gelfand – Chair of Condo Planned Development Committee of the Florida Bar. Discussed Bar's thoughts on appropriate role of state regulation and the individuals access to the courts, SB 1556 and HB391, the Plaza East declaratory statement, the Office of the Condominium Ombudsman, and the development of a condominium within a condominium, and insurance issues. Mr. Gelfand provided an overview of the condominium termination issues and supported SB 1556, he was opposed to the division's opinion expressed in the Plaza East declaratory statement .

Mike Brudny; attorney; his firm represents at least 400 associations in Tampa area. Described concerns regarding lender consent requirements that make it difficult to amend declarations. Many condominium documents require that no amendments may be adopted without consent of lenders. Felt that it is impossible to determine and obtain response from lenders, as time and money involved would be enormous. With regards to the Ombudsman; has had personal experience with the Ombudsman that was not positive. Stated that he is not opposed to concept of Ombudsman but felt it is critical that the person appointed is not political but is knowledgeable and objective.

Cliff Jordan; board member at Seven Lakes Condominium Association. Stated that Advisory Council is doing great job of zeroing in on problems. He took four basic CAI courses, then ran for the board. Stated that he is worried about term limitations; felt that during first year, board member is learning. Stated that we can't let a few problems cause legislative changes. Also felt that CAI courses are very good.

Bob Von Walde; unit owner, association with 81 units. Stated that reserve funding should be mandatory. Half of his unit's hurricane damage was not covered by insurance. Felt it would be good to vest boards with authority to take emergency action. Felt that foreclosure bill was a bad idea and would be a burden on everyone else to pay. Also felt that a residency requirement for board members and mandatory board education were bad ideas, as no one will serve on board.

Pamela Manser; unit owner, just purchased condo a year ago. Feels unit owner does not have voice. Thinks property manager, developer and CAMs should let unit owners know who they can get help from. Discussed turnover audit and records with Council.

### **Homeowners' Associations**

David Montgomery; President of Tortoise View Homeowners' Association; 21 homes; Satellite Beach. Stated that two years ago, the local health department ruled that their pool is commercial, which created a tremendous financial burden. He thinks law is unfair. Chair Dunbar suggested that Mr. Montgomery contact his local legislator (Representative Needleman) and ask for assistance on this issue in next legislative session. Chair Dunbar will also talk to CALL and CAI to communicate to this issue of swimming pool exemption for next year's legislature.

## APPENDIX

### Draft Legislation

**Section 1. Subsection (1) and paragraph (4)(e) of 718.1255 are amended to read and new subsection (6) of 718.1255 is created to read as follows:**

(1) DEFINITIONS.—As used in this section, the term “dispute” means any disagreement between two or more parties that involves:

(a) The authority of the board of directors, under this chapter or association document to:

1. Require any owner to take any action, or not to take any action, involving that owner’s unit or the appurtenances thereto.

2. Alter or add to a common area or element.

(b) The failure of a governing body, when required by this chapter or an association document, to:

1. Properly conduct elections.

2. Give adequate notice of meetings or other actions.

3. Properly conduct meetings.

4. Allow inspection of books and records.

(c) The claim that action or inaction of the board of directors or an officer of the association has failed to substantially comply with the provisions of this chapter or the rules of the division promulgated under this chapter and which are ongoing or create or have created economic harm to the petitioner.

“Dispute” does not include any disagreement that primarily involves: title to any unit or common element; the interpretation or enforcement or any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or the condominium property.

(4)(e) Either before or after the filing of the respondents’ answer to the petition, any party may request that the arbitrator refer the case to mediation under this section and any rules adopted by the division. Upon receipt of a request for mediation, the division shall promptly contact the parties to determine if there is agreement that mediation would be appropriate. If all parties agree, the dispute must be referred to mediation. In the event that a party declines to mediate after a request has been made, such party shall not be entitled to recover attorney’s fees and costs in the arbitration proceeding or in any subsequent judicial proceeding. Notwithstanding a lack of an agreement by all parties, the arbitrator may refer a dispute to mediation at any time.

(6) VIOLATION BY AN ASSOCIATION.—If the arbitrator shall conclude that there is reasonable cause to believe that an association has failed to substantially comply with the provisions of this chapter or the rules of the division promulgated under this chapter and which are ongoing or create or have created economic harm to the petitioner, in addition to other relief, the arbitrator shall file a written report containing the findings and conclusions concerning any such finding with the division. Upon request of a party against whom penalties maybe levied, the division shall hold a hearing on such findings, and upon a determination that such violation or violations occurred, the division may impose a civil penalty for such violation or violations within its jurisdiction in accordance with penalty guidelines authorized by ss. 718.501 (1) (d) 4, and may, in addition to such penalty guidelines, may remove an officer or board members from office who willfully and knowingly commits a violation or violations.

**Section 2. Paragraphs (d) and (l) of 718.501 are amended to read as follows:**

(1) The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation, referred to as the "division" in this part, in addition to other powers and duties prescribed by chapter 498, has the power to enforce and ensure compliance with the provisions of this chapter and rules promulgated pursuant hereto relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has the following powers and duties:

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or rule promulgated pursuant hereto has occurred, the division may institute enforcement proceedings in its own name against any developer, ~~association,~~ developer-designated officer, or developer-designated member of the board of administration, or the developer-designated assignees or agents, as follows:

1. 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.

2. The division may issue an order requiring the developer, ~~association,~~ or developer-designated officer, or developer-designated member of the board of administration, or developer-designated 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 the developer to pay moneys determined to be owed to the condominium association.

3. 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.

4. The division may impose a civil penalty against a developer or, pursuant to s. 718.1255, an association, or its assignee or agent, for any violation of this chapter or a rule promulgated pursuant hereto. The division may impose a civil penalty individually against any developer-designated officer or developer-designated 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. The division, prior to initiating formal agency action under chapter 120, shall afford the officer or board member an opportunity to voluntarily comply with this chapter, a rule adopted under this chapter, or a final order of the division. An officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed \$5,000. By January 1, 1998, the division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. If a developer fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order will not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

(e) The division is authorized to prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer during the period where the developer controls the association when the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing in such condominium community.

(h) The division shall furnish each association which pays the fees required by paragraph (2)(a) a copy of this act, subsequent changes to this act on an annual basis, an amended version of this act as it becomes available from the Secretary of State's office on a biennial basis, and the rules promulgated pursuant thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, in the Division discretion, include web-based, electronic media and live training and seminars in various locations throughout the state. The Division shall also have the authority to review and approve training and educational programs offered by outside providers. The Division shall maintain a current list of approved programs and providers and shall make such list available in a reasonable and cost-effective manner. The division shall have the authority to review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and shall make such list available to board members and unit owners in a reasonable and cost-effective manner

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to utilize both certified volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in arbitration proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have

mediated at least 20 disputes. Paid mediators must be certified by the Supreme Court to mediate court cases in either county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which factors must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements imposed by rules adopted by the division.

(m) When a complaint is made the developer, or developer-designated officer, or developer-designated member of the board of administration, or developer-designated assignees or agents, the division shall conduct its inquiry with due regard to the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and shall, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule of the division has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57.

**Section 4. Section 718.5012 is amended to read as follows:**

**718.5012 Ombudsman; powers and duties.**—~~The ombudsman shall have the powers that are necessary to carry out the duties of his or her office, including the following specific powers and duties~~ with regard to condominium associations controlled by unit owners other than the developer:

- (1) To have access to and use of all files and records of the division.
- (2) To employ professional and clerical staff as necessary for the efficient operation of the office.
- (3) 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. The ombudsman shall make recommendations he or she deems appropriate for legislation relative to division procedures, rules, jurisdiction, personnel, and functions.
- (4) To act as liaison between the division, unit owners, boards of directors, board members, community association managers, and other affected parties. ~~The ombudsman shall develop policies and procedures to assist unit owners, boards of directors, board members, community association managers, and other affected parties to understand their rights and responsibilities as set forth in this chapter,~~ rules

promulgated by the division pursuant to this chapter, and the condominium documents governing their respective association. The ombudsman shall coordinate and assist in the preparation and adoption of educational and reference materials may provide a list of needed educational and reference materials to the division, and shall endeavor to coordinate with private or volunteer providers of these services, so that the availability of these resources is made known to the largest possible audience.

~~(5)~~ Pursuant to rules promulgated by the division for such purposes, to monitor and review procedures and disputes concerning condominium elections and meetings, including, but not limited to, the conduct of elections recommending that the division pursue enforcement action in any manner where there is reasonable cause to believe that election misconduct has occurred.

~~(6)~~ To 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.

~~(7)~~ (6) To provide resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with this chapter, division rules, and the condominium documents governing the association.

~~(8)~~ (7) 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 to assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy is sought. It is the intent of the Legislature that the ombudsman act as a neutral resource for both the rights and responsibilities of unit owners, associations and board members.

~~(9)~~ (8) Fifteen The board of directors of the association or twenty percent of the total voting interests in a condominium association; or six unit owners, whichever is greater, may petition the ombudsman to appoint an election monitor to attend the annual meeting of the unit owners and conduct the election of directors. The ombudsman shall may appoint a division an employee of the office of the ombudsman, a person or persons specializing experienced in condominium election monitoring, or an attorney licensed to practice in this state as the election monitor. All costs associated with the election monitoring process shall be paid by the association. The division shall adopt a rule establishing procedures for the appointment of election monitors and the scope and extent of the monitor's role in the election process. The rules shall provide for an estimate of fees and costs for the election monitoring shall be provided to the association upon request.

(9) To appear in proceedings under 718.1255 (1)(c) when one or more parties to a dispute fails or refuses to take part in a meeting or to participate in good faith at a meeting provided for under subsection (7) hereof.

(10) The ombudsman shall have the powers and duties necessary to carry out the duties of his or her office as enumerated by this section.

## **Condominium Conversions Legislation**

By Senator Margolis

35-348A-07

1                   A bill to be entitled  
2       An act relating to the conversion of existing  
3       improvements to condominium ownership; amending  
4       s. 718.616, F.S.; requiring that certain  
5       disclosures be compiled in a report; revising  
6       the items required to be disclosed; requiring  
7       supplemental reports in certain situations;  
8       amending s. 718.618, F.S.; revising certain  
9       requirements for reserve accounts; revising the  
10      method of computing the amounts required to  
11      fund additional converter reserve accounts;  
12      deleting references to specific items that are  
13      covered by an implied warranty of fitness in  
14      the absence of reserve accounts; requiring that  
15      a developer disclose in a contract of sale  
16      compliance with certain obligations regarding  
17      the maintenance of improvements; providing an  
18      effective date.

19

20 Be It Enacted by the Legislature of the State of Florida:

21

22       Section 1. Section 718.616, Florida Statutes, is

23 amended to read:

24 718.616 Disclosure of condition of building and

25 estimated replacement costs and notification of

26 municipalities.--

27 (1) Each developer of a residential condominium

28 created by converting existing, previously occupied

29 improvements to such form of ownership shall prepare a report

30 that discloses ~~disclose~~ the condition of the improvements and

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1 the condition of certain components and their current

2 estimated replacement costs as of the date of the report.

3 (2) The following information shall be stated

4 concerning the improvements:

5 (a) The date and type of construction.

6 (b) The prior use.

7 (c) Whether there is termite damage or infestation and

8 whether the termite damage or infestation, if any, has been

9 properly treated. The statement shall be substantiated by

10 including, as an exhibit, an inspection report by a certified

11 pest control operator.

12 (3)(a) Disclosure of condition shall be made for each

13 of the following components that the existing improvements may

14 include:

- 15 1. Roof.
- 16 2. Structure.
- 17 3. Fireproofing and Fire protection systems.
- 18 4. Elevators.
- 19 5. Heating and cooling systems.
- 20 6. Plumbing.
- 21 7. Electrical systems.
- 22 8. Swimming pool.
- 23 9. Seawalls, pilings, and docks.
- 24 10. Pavement and concrete, including roadways,
- 25 walkways, and parking areas.
- 26 11. Drainage systems.
- 27 12. Irrigation systems.
- 28 (b) For each component, the following information
- 29 shall be disclosed and substantiated by attaching a copy of a
- 30 certificate under seal of an architect or engineer authorized
- 31 to practice in this state:

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- 1 1. The age of the component as of the date of the
- 2 report.
- 3 2. The estimated remaining useful life of the
- 4 component as of the date of the report.
- 5 3. The estimated current replacement cost of the

6 component as of the date of the report, expressed:

7 a. As a total amount; and

8 b. As a per-unit amount, based upon each unit's  
9 proportional share of the common expenses.

10 4. The structural and functional soundness of the  
11 component.

12 (c) Each unit owner and the association are  
13 third-party beneficiaries of the report.

14 (d) A supplemental report shall be prepared for any  
15 structure or component that is renovated or repaired after  
16 completion of the original report and prior to the recording  
17 of the declaration of condominium. If the declaration is not  
18 recorded within 1 year after the date of the original report,  
19 the developer shall update the report annually prior to  
20 recording the declaration of condominium.

21 (e) The report may not contain representations on  
22 behalf of the development concerning future improvements or  
23 repairs and must be limited to the current condition of the  
24 improvements.

25 (4) If the proposed condominium is situated within a  
26 municipality, the disclosure shall include a letter from the  
27 municipality acknowledging that the municipality has been  
28 notified of the proposed creation of a residential condominium  
29 by conversion of existing, previously occupied improvements  
30 and, in any county, as defined in s. 125.011(1), acknowledging

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1 compliance with applicable zoning requirements as determined  
2 by the municipality.

3 Section 2. Section 718.618, Florida Statutes, is  
4 amended to read:

5 718.618 Converter reserve accounts; warranties.--

6 (1) When existing improvements are converted to  
7 ownership as a residential condominium, the developer shall  
8 establish reserve accounts for capital expenditures and  
9 deferred maintenance, or give warranties as provided by  
10 subsection (6), or post a surety bond as provided by  
11 subsection (7). The developer shall fund the reserve accounts  
12 in amounts calculated as follows:

13 (a)1. When the existing improvements include an  
14 air-conditioning system serving more than one unit or property  
15 which the association is responsible to repair, maintain, or  
16 replace, the developer shall fund an air-conditioning reserve  
17 account. The amount of the reserve account shall be the  
18 product of the estimated current replacement cost of the  
19 system, as disclosed and substantiated pursuant to s.  
20 718.616(3)(b), multiplied by a fraction, the numerator of  
21 which shall be the lesser of the age of the system in years or  
22 9, and the denominator of which shall be 10. When such  
23 air-conditioning system is within 1,000 yards of the seacoast,  
24 the numerator shall be the lesser of the age of the system in

25 years or 3, and the denominator shall be 4.

26 2. The developer shall fund a plumbing reserve  
27 account. The amount of the funding shall be the product of the  
28 estimated current replacement cost of the plumbing component,  
29 as disclosed and substantiated pursuant to s. 718.616(3)(b),  
30 multiplied by a fraction, the numerator of which shall be the  
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1 lesser of the age of the plumbing in years or 36, and the  
2 denominator of which shall be 40.

3 3. The developer shall fund a roof reserve account.  
4 The amount of the funding shall be the product of the  
5 estimated current replacement cost of the roofing component,  
6 as disclosed and substantiated pursuant to s. 718.616(3)(b),  
7 multiplied by a fraction, the numerator of which shall be the  
8 lesser of the age of the roof in years or the numerator listed  
9 in the following table. The denominator of the fraction shall  
10 be determined based on the roof type, as follows:

11

12	Roof Type	Numerator	Denominator
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14 a. Built-up roof

15	without insulation	4	5
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16 b. Built-up roof		
17 with insulation	4	5
18 c. Cement tile roof	45	50
19 d. Asphalt shingle roof	14	15
20 e. Copper roof		
21 f. Wood shingle roof	9	10
22 g. All other types	18	20

23

24 (b) The age of any component or structure for which  
 25 the developer is required to fund a reserve account shall be  
 26 measured in years, rounded to the nearest whole year. The  
 27 amount of converter reserves to be funded by the developer for  
 28 each structure or component shall be based on the age of the  
 29 structure or component as disclosed in the inspection report.  
 30 The architect or engineer shall determine the age of the  
 31 component from the later of:

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- 1 1. The date when the component or structure was
- 2 replaced or substantially renewed, if the replacement or
- 3 renewal of the component at least met the requirements of the
- 4 then-applicable building code; or
- 5 2. The date when the installation or construction of
- 6 the existing component or structure was completed.

7 (c) When the age of a component or structure is to be  
8 measured from the date of replacement or renewal, the  
9 developer shall provide the division with a certificate, under  
10 the seal of an architect or engineer authorized to practice in  
11 this state, verifying:

- 12 1. The date of the replacement or renewal; and
- 13 2. That the replacement or renewal at least met the  
14 requirements of the then-applicable building code.

15 (d) In addition to establishing the reserve accounts  
16 specified above, the developer shall establish those other  
17 reserve accounts required by s. 718.112(2)(f), and shall fund  
18 those accounts in accordance with the formula provided  
19 therein. The vote to waive or reduce the funding or reserves  
20 required by s. 718.112(2)(f) does not affect or negate the  
21 obligations arising under this section.

22 (2)(a) The developer shall fund the reserve account  
23 required by subsection (1), on a pro rata basis upon the sale  
24 of each unit. The developer shall deposit in the reserve  
25 account not less than a percentage of the total amount to be  
26 deposited in the reserve account equal to the percentage of  
27 ownership of the common elements allocable to the unit sold.  
28 When a developer deposits amounts in excess of the minimum  
29 reserve account funding, later deposits may be reduced to the  
30 extent of the excess funding. For the purposes of this  
31 subsection, a unit is considered sold when a fee interest in

1 the unit is transferred to a third party or the unit is leased  
2 for a period in excess of 5 years.

3 (b) When an association makes an expenditure of  
4 reserve account funds before the developer has sold all units,  
5 the developer shall make a deposit in the reserve account.  
6 Such deposit shall be at least equal to that portion of the  
7 expenditure which would be charged against the reserve account  
8 deposit that would have been made for any such unit had the  
9 unit been sold. Such deposit may be reduced to the extent the  
10 developer has funded the reserve account in excess of the  
11 minimum reserve account funding required by this subsection.  
12 This paragraph applies only when the developer has funded  
13 reserve accounts as provided by paragraph (a).

14 (3) The use of reserve account funds is limited as  
15 follows:

16 (a) Reserve account funds may be spent prior to the  
17 assumption of control of the association by unit owners other  
18 than the developer; and

19 (b) Reserve account funds may be expended only for  
20 repair or replacement of the specific components for which the  
21 funds were deposited, unless, after assumption of control of  
22 the association by unit owners other than the developer, it is  
23 determined by three-fourths of the voting interests in the  
24 condominium to expend the funds for other purposes.

25 (4) The developer shall establish the reserve account  
26 in the name of the association at a bank, savings and loan  
27 association, or trust company located in this state.

28 (5) A developer may establish and fund additional  
29 converter reserve accounts. The amount of funding shall be the  
30 product of the estimated current replacement cost of a  
31 component, as disclosed and substantiated pursuant to s.

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1 718.616(3)(b), multiplied by a fraction, the numerator of  
2 which is the age of the component in years and the denominator  
3 of which is the total estimated life of the component in  
4 years.

5 (6) A developer makes no implied warranties when  
6 existing improvements are converted to ownership as a  
7 residential condominium and reserve accounts are funded in  
8 accordance with this section. As an alternative to  
9 establishing such reserve accounts, or when a developer fails  
10 to establish the reserve accounts in accordance with this  
11 section, the developer shall be deemed to have granted to the  
12 purchaser of each unit an implied warranty of fitness and  
13 merchantability for the purposes or uses intended, ~~as to the~~  
14 ~~roof and structural components of the improvements; as to~~  
15 ~~fireproofing and fire protection systems; and as to~~

16 ~~mechanical, electrical, and plumbing elements serving the~~  
17 ~~improvements, except mechanical elements serving only one~~  
18 ~~unit.~~ The warranty shall be for a period beginning with the  
19 notice of intended conversion and continuing for 3 years  
20 thereafter, or the recording of the declaration to condominium  
21 and continuing for 3 years thereafter, or 1 year after owners  
22 other than the developer obtain control of the association,  
23 whichever occurs last, but in no event more than 5 years.

24 (a) The warranty provided for in this section is  
25 conditioned upon routine maintenance being performed, unless  
26 the maintenance is an obligation of the developer or a  
27 developer-controlled association.

28 (b) The warranty shall inure to the benefit of each  
29 owner and successor owner.

30 (c) Existing improvements converted to residential  
31 condominium may be covered by an insured warranty program

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1 underwritten by an insurance company authorized to do business  
2 in this state, if such warranty program meets the minimum  
3 requirements of this chapter. To the degree that the warranty  
4 program does not meet the minimum requirements of this  
5 chapter, such requirements shall apply.

6 (7) When a developer desires to post a surety bond,

7 the developer shall, after notification to the buyer, acquire  
8 a surety bond issued by a company licensed to do business in  
9 this state, if such a bond is readily available in the open  
10 market, in an amount which would be equal to the total amount  
11 of all reserve accounts required under subsection (1), payable  
12 to the association.

13 (8) The amended provisions of this section do not  
14 affect a conversion of existing improvements when a developer  
15 has filed a notice of intended conversion and the documents  
16 required by s. 718.503 or s. 718.504, as applicable, with the  
17 division prior to the effective date of this law, provided:

18 (a) The documents are proper for filing purposes.

19 (b) The developer, not later than 6 months after such  
20 filing:

21 1. Records a declaration for such filing in accordance  
22 with part I.

23 2. Gives a notice of intended conversion.

24 (9) This section applies only to the conversion of  
25 existing improvements where construction of the improvement  
26 was commenced and occupied prior to its designation by the  
27 developer as a condominium. In such circumstances, s. 718.203  
28 does not apply.

29 (10) A developer who sells a condominium parcel that  
30 is subject to this part shall disclose in conspicuous type in  
31 the contract of sale whether the developer has established

- 1 reserve accounts, provided a warranty of fitness and
- 2 merchantability, or posted a surety bond for purposes of
- 3 complying with this section.
- 4 Section 3. This act shall take effect July 1, 2007.