

Master Condominium Associations



Florida House of Representatives

Committee on Real Property and Probate

December 1999

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The Florida House of Representatives

Honorable John Thrasher, Speaker

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Representative J. Dudley Goodlette, Chair

Report on Master Condominium Associations

Executive Summary

Master Condominium Associations are entities that manage property or facilities in which condominium unit owners have use rights. Master condominium associations can assess fees and place liens against unit owners in order to collect such fees. Some master condominium associations are regulated by Chapter 718, F.S., the "Condominium Act". These associations have difficulty applying the current provisions of Chapter 718, F.S., because those provisions were written for traditional or single association condominium associations. Master condominium associations not regulated by Chapter 718, F.S., have been the subject of numerous complaints regarding their practices and procedures.

There are two widely disparate views on how the state should resolve the concerns regarding master condominium associations. One view is that the condominium regulations in Chapter 718, F.S., should be applied to all master condominium associations. Several bills have been introduced in the past that would do this. None have passed. The opposing view, taken by the Department of Business and Professional Regulation and by certain private interests, is that no regulation of master condominium associations is warranted; and, that master condominium associations should be specifically excluded from regulation under the provisions of Chapter 718, F.S.

Various alternatives have been suggested regarding how to resolve these concerns. There is not, however, sufficient statistical data to support any of the suggestions. Accordingly, staff has insufficient information to make a recommendation as to the appropriate course of action, and thus recommends that a study of the issue be undertaken.

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Purpose of the Report

In 1998, the Division of Florida Land Sales, Condominiums, and Mobile Homes, within the Department of Business and Professional Regulation, conducted a series of meetings with, what came to be known as, the Legislative Discussion Group. One purpose of those meetings was to address concerns regarding master condominium associations. Under current law, certain master condominium associations are governed by Chapter 718, F.S.,¹ while others are not. Some participants believed that all master condominium associations should be governed by Chapter 718, F.S., while other participants believed that no master condominium association should be governed by Chapter 718, F.S. The Legislative Discussion Group also noted that the current provisions of Chapter 718, F.S., are not tailored to meet the needs of master condominium associations because that chapter was originally written for “traditional” condominium associations.²

Participants in the Legislative Discussion Group included representatives of developers and associations, regulatory staff, legal practitioners, legislative staff, and other interested parties. The discussions regarding regulation of master condominium associations were controversial; nonetheless, various leaders of the group decided to include master condominium association regulation in the group’s final work product. The Committee on Real Property and Probate sponsored that work product in the 1999 legislative session as a

¹ Chapter 718, F.S., is sometimes referred to as the Condominium Act.

² A typical example of a “traditional” condominium association in Florida is a beachfront high rise. The condominium is a single building, and the associations’s common expenses consist of the maintenance costs for a roof, the exterior portions of the building, a parking lot, and a swimming pool. Unit owners own the interior of their units. The provisions of Chapter 718, F.S., are relatively clear as they apply to this type of association.

proposed committee bill. However, the master condominium association provisions were later removed from the proposed committee bill because certain affected parties voiced concerns, and because the Department of Business and Professional Regulation, under new leadership, requested additional time to study the issues.

The purpose of this interim project report is to provide the Legislature with information regarding master condominium associations and the issues surrounding their governance, and to describe various alternatives for addressing master condominium association issues.

Background

The term “master condominium association”³ is not defined in the Florida Statutes. It has come to mean an entity that is primarily responsible for the operation of real property or facilities that do not constitute the common elements of a condominium or association property of a condominium association, when

- Condominium unit owners have use rights in the property or facilities;
- Voting membership is exclusively condominium unit owners (or their agents or representatives);
- Membership either directly by a condominium unit owner or indirectly through an agent or representative is a required condition of condominium unit ownership; and
- The entity is authorized to assess its members or affected owners for the payment of shared expenses, and any unpaid assessment may ultimately become a lien on a condominium parcel or on the common elements of a condominium.

While the term “master condominium association” is not defined in Chapter 718, F.S., the Condominium Act,⁴ s. 718.103(2), F.S., currently defines “association” to mean:

in addition to those entities responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which condominium unit owners have use rights, where unit owner membership in the entity is composed exclusively of condominium unit owners or their elected or appointed representatives, and where membership in the entity is a required condition of unit ownership. [emphasis added]

The emphasized portion of the definition of “association” is commonly used to describe a master condominium association. It is important to note, however, that not all

³ “Master condominium associations” are often also commonly referred to simply as “master associations”, a phrase that will be found within much of the quoted material in this report.

⁴ “Condominium” means that form of ownership of real property which is created pursuant to the provisions of Chapter 718, F.S., which is comprised of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in the common elements. s. 718.103(11), F.S.

associations identified as “master condominium associations” fall within the definition of “association”.

First, to meet the definition of “association” under Chapter 718, F.S., condominium unit owners must have use rights in the real property operated or maintained by the association. Second, a master condominium association’s membership must consist exclusively of condominium unit owners, or their elected or appointed representatives. Some associations include representatives of all projects in the development, including perhaps single family homes, life care facilities, or commercial entities in addition to condominiums. If a master condominium association includes non-condominium unit owners in its membership, it is not an “association” governed by Chapter 718, F.S. Third, membership in the master condominium association must be mandatory; condominium unit owners or their representatives may not “opt” out of the association at any time.⁵

It is important to understand the differences between a “traditional” condominium association and a “master” condominium association. A traditional condominium association derives its authority from a recorded declaration of condominium, whereas a master condominium association usually derives its authority from a recorded declaration of covenants. A traditional condominium association generally consists of one unit or phase of construction, whereas a master condominium association usually involves a large tract of land on which the developer intends to construct multiple projects that will benefit from one or more common facilities operated by the master condominium association; e.g., roads, club house, sewer plant. In some cases, the declaration of covenants may explicitly provide that all projects constructed must be condominiums, but in most cases the declaration merely limits future construction to residential use. In some cases, the declaration of covenants provides for both residential and commercial development, at the developer’s discretion. Thus, in most cases, until all construction within the development is completed, one cannot determine

⁵ The typical example of an opt-out type of association is a country club arrangement where a property owner is allowed to, but not required to, join the association or club.

whether a master condominium association will contain only condominium units, and thereby fall within the definition of “association” in Chapter 718, F.S.

The determination as to whether a master condominium association falls within the jurisdiction of Chapter 718, F.S., and thus the jurisdiction of the Department of Business and Professional Regulation,⁶ must be made on a case by case basis after examination of numerous factors. Because jurisdiction over master condominium associations is often unclear, the department states⁷ that it spends valuable investigative resources reviewing complaints that ultimately cannot be resolved under Chapter 718, F.S.

When the bureau receives a complaint involving a master association, staff must make an extensive review of the legal documents governing the association to determine jurisdiction and the applicability of Chapter 718, F.S. Even when the bureau determines that the master association falls under the statutory provisions of Chapter 718, F.S., it may be unable to resolve the complaint because the problem may not be covered by the current wording of condominium statutes. Thus, staff spend valuable investigative resources reviewing complaints related to master associations that they are unable to resolve.⁸

The Department of Business and Professional Regulation has created materials to educate condominium owners on the differences between master condominium associations and traditional condominium associations. However, the ambiguities associated with the jurisdiction issue makes that effort difficult. The department identified some of these ambiguities as follows:

Is the association subject to Chapter 718 as long as the membership at the moment is exclusively unit owners or is application of the statute determined only when the development is complete? Can an association be subject to the requirements of Chapter 718 at one time but not another? If it is initially exempt but later included,

⁶ The Bureau of Condominiums, within the Division of Florida Land Sales, Condominiums, and Mobile Homes, within the Department of Business and Professional Regulation is the bureau responsible for condominium regulation.

⁷ Memorandum from Martha Barrera, Esquire, of the Department of Business and Professional Regulation, to Lynda Goodgame, Esquire, then general counsel of the Department of Business and Professional Regulation, regarding Master Associations, dated January 12, 1998.

⁸ The Office of Program Policy Analysis and Government Accountability, Report No. 97-62, Review of the Bureau of Condominiums Complaint Investigation Process, March 1998, at 4.

what effect does this have on past financial and other operations? The Division does not feel that it can apply the statute to associations when there is a the possibility of future non-condominium unit owner members.

When it is determined that a master association is subject to Chapter 718, Florida Statutes, numerous difficulties ensue in applying the various provisions. A quick review of a few of the definitions in Section 718.103, Florida Statutes, indicates the nature of the problems. "Common expenses," "common elements," "condominium property," "declaration," and "common surplus" are all defined in terms of the condominium and not other forms of real property. Therefore, any provision in the statute that uses these terms, as specifically defined, usually cannot be applied to the master association because it does not operate a condominium.

The election provisions of Section 718.112(2)(d)3., Florida Statutes, provide another example of the failure of the statute to recognize the differences between the two types of associations. This section requires that board members be elected by written ballot or voting machine and further provides for unit owners to serve on the board and to vote for the election of directors. This process works well in condominium associations but not in master condominium associations. The membership of master associations may consist of the individual associations they serve rather than individual unit owners, thus avoiding unduly large meetings and quorum requirements that are difficult to obtain. In these instances, the documents usually do not provide for direct unit owner election of members to the master association board. They also may provide that unit owners are not eligible for positions on the board unless they have been elected to their individual association boards. The selection of members to the boards of master associations may be made from the boards of the individual member associations or by other methods. Master associations may be organized in a variety of ways as provided by their documents, which are often in conflict with the statute. This has made it impossible for the Division to apply the election provisions to master associations without legislative direction in this area. More importantly, it has left the consumer without guidance as to how to conduct elections.⁹

A leading commentator¹⁰ identifies two primary approaches for resolving some of the issues relating to master condominium associations: place master condominium associations

⁹ Condominium and Cooperative Study, A Report by the Division of Florida Land Sales, Condominiums and Mobile Homes, January 1996, at 69-69.

¹⁰ Memorandum from Joseph Adams, Esquire, to Department of Business and Professional Regulation, regarding Master Association/Multi-condominium Association Issues, dated August 11, 1998, at 9-10.

under ss. 617.301-.312, F.S.¹¹; or create a new part in Chapter 718, F.S., to specifically deal with the unique nature of master condominium associations. Currently, master condominium associations not governed by Chapter 718, F.S., fall under the jurisdiction of ss. 617.301-.312, F.S.¹² Removing those master condominium associations currently governed by Chapter 718, F.S., from that chapter's jurisdiction, and placing them under the jurisdiction of ss. 617.301-.312, F.S., would eliminate the applicability of the consumer protections afforded by Chapter 718, F.S., which are not found in ss. 617.301-.312, F.S. Among the most important protections found in Chapter 718, F.S., are: construction warranty rights, post-turnover¹³ audit requirements, clearer turnover guidelines, and the right to cancel onerous pre-turnover contracts made by a developer-controlled board. Along with these consumer protections which benefit the association as a whole, there are also heightened protections for individual unit owners that do not apply to homeowners' associations, including: the right to speak at Board meetings, the right to receive a substantive response to complaints or inquiries, and entitlement to more thorough year-end financial reports. Creating a new part in Chapter 718, F.S., could allow the above-described protections to exist with respect to master condominium associations, and would serve as a compromise position

¹¹ Chapter 617, F.S., relates to non-profit corporations. Sections 617.301-.312, F.S., are laws specifically regulating homeowners' associations. A homeowners' association is defined as "a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel." Sections 617.301-.312, F.S., are not applicable to a condominium association governed under Chapter 718, F.S., but are applicable to those master condominium associations not governed by Chapter 718, F.S. See s. 617.302(4), F.S.

¹² Sections 617.301-.312, F.S., only apply to a homeowners' association or master condominium association that is a not-for-profit corporation. While possible, it would be unusual to discover such an association formed as an entity other than as a not-for-profit corporation.

¹³ In most associations (whether condominium or homeowners'), the developer will create the association and assume full control over the association from its inception. The two most important early functions of an association are architectural control and common area landscaping and maintenance. Because those functions have an impact on sales, nearly all developers want to maintain control of a condominium or homeowners' association as long as possible; and often do until the development is complete or nearly complete. "Turnover" is the point where the developer turns over control of the association to the property owners.

between ad-hoc amendments to the Condominium Act and placing master condominium associations solely under the jurisdiction of ss. 617.301-.312, F.S.¹⁴

In 1998, the Department of Business and Professional Regulation agreed to organize and facilitate meetings at which knowledgeable and interested parties could discuss and draft proposed legislation that would resolve some of the concerns relating to the regulation of master condominium associations. Participants in the Legislative Discussion Group included representatives of developers and associations, regulatory staff, legal practitioners, legislative staff, and other interested parties. Six meetings were held. Group discussions regarding regulation of master condominium associations were controversial. Some of the participants believed that all master condominium associations should be governed by Chapter 718, F.S., while other participants believed that no master condominium association should be governed by Chapter 718, F.S. Nonetheless, master condominium association provisions were included in the legislation submitted by leaders of the group and were made a part of a 1999 legislative session proposed committee bill by the House Committee on Real Property and Probate. The master condominium association provisions were eventually removed from the proposed committee bill. The House passed the bill,¹⁵ but it died on the Senate calendar.

¹⁴ According to a leading commentator, "This idea appears to warrant serious discussion." Memorandum to Department of Business and Professional Regulation from Joseph Adams, Esquire, regarding Master Association/Multi-condominium Association Issues, dated August 11, 1998, at 10.

¹⁵ House Bill 2171.

History of Master Condominium Association Issues

Definition of “Association”

The main issue relating to master condominium associations is whether such associations should be governed by Chapter 718, F.S. Placement within Chapter 718, F.S., would result in regulation of master condominium associations by the Department of Business and Professional Regulation. If regulation is appropriate, then other issues arise; such as, which master associations should be governed and to what degree. Which associations are regulated depends upon the statutory definition of “association.”

In 1976, when “association” was first defined in Chapter 718, F.S., the definition did not specifically include or exclude master condominium associations. The definition was simply: “the corporate entity responsible for the operation of a condominium.”¹⁶

*Raines v. Palm Beach Leisureville Community Association*¹⁷ was the first significant court decision regarding the definition of “association”. The decision was rendered in 1982 by the Florida Supreme Court. In *Raines*, condominium owners of a mixed community (one that included non-condominium units) objected to assessments by the master condominium association. The development consisted of 21 separate condominium associations totaling 502 units, together with 1803 single family homes. The Florida Supreme Court ruled that the master condominium association was not an “association” governed by Chapter 718, F.S., because,

[a]lthough the association has broad powers, it is not “the corporate entity responsible for the operation of a condominium.” § 718.103(2). The individual condominium associations fit within this definition, but the respondent association does not.¹⁸

Nonetheless, the court stated:

It might well be that other associations similar to this one would be associations as defined by the statute. We can find, however, no legislative intent to

¹⁶ Section 718.103(2), F.S. (1976).

¹⁷ *Raines v. Palm Beach Leisureville Community Association*, 413 So.2d 30 (Fla. 1982).

¹⁸ *Raines* at 32.

cover the instant management association. The legislature might decide to include this type of association within the scope of chapter 718 in the future.¹⁹

The issue of whether a master condominium association met the definition of “association” in Chapter 718, F.S., arose again in 1985 in *Department of Business Regulation, Division of Land Sales v. Siegel*.²⁰ In *Siegel*, a master condominium association was formed to manage a health spa, marina, restaurant, and tennis courts, and to act as the architectural control committee for all six parcels of the development. At the time of the complaint, four parcels had been built as condominiums, the other two had not been built. The documents creating the master condominium association stated that the developer could build non-condominium units on the parcels that were, at the time of the litigation, vacant land. A unit owner petitioned the Department of Business Regulation²¹ for a declaratory statement that the master condominium association met the definition of “association” and was thus governed by Chapter 718, F.S. On appeal, the Florida Supreme Court ruled that Chapter 718, F.S., does not apply to a master condominium association when the development is not complete and the developer could add non-condominium units to the master condominium association. The court again invited review of the area, saying: “[T]he statutory treatment of this type of association might be an appropriate subject of legislative consideration.”²²

Based on *Raines* and *Siegel*, the Department of Business Regulation enacted a policy of carefully reviewing master condominium documents when a complaint about one was filed. If the department determined that non-condominium units were part of the master condominium association, or could become part of the master condominium association, the department would dismiss the complaint for lack of jurisdiction.

¹⁹ *Id.*

²⁰ *Department of Business Regulation, Division of Land Sales v. Siegel*, 479 So.2d 112 (Fla. 1985).

²¹ Now known as the Department of Business and Professional Regulation.

²² *Siegel* at 114.

In 1986, the Auditor General's Office reviewed the issue, and concluded that master condominium associations should be regulated under Chapter 718, F.S.:

The lack of regulations for master associations may result in unit owners losing some degree of control over the operation of their condominium and other consumer protections guaranteed to other unit owners by Chapter 718, Florida Statutes. The consumer protection offered in Chapter 718, Florida Statutes, could be made more comprehensive by including regulation of any association or organization authorized to place assessments, liens, or fines against a condominium unit. We therefore recommend that the Legislature amend Section 718.103, Florida Statutes, to define "master association" and incorporate the regulation of these associations into the Condominium Act to ensure that the rights of unit owners are protected by providing for unit owner representation on the board of directors of master associations.²³

The Department of Business Regulation replied:

With respect to the issue concerning master associations, the Division [of Florida Land Sales, Condominiums and Mobile Homes] would support a legislative amendment to bring some regulation to master associations.²⁴

Jungle Den and its Progeny

In 1988, the Florida Fifth District Court of Appeals in *Downey v. Jungle Den Villas Recreation Association, Inc.*,²⁵ looked at the definition of "association" as it relates to master condominium associations. In *Jungle Den*, a nonprofit corporation was created to manage recreation facilities for seven condominium associations. The development was completed, and included only condominium units. The Jungle Den Villas Recreation Association corporation acted as a master condominium association, managing common recreation facilities. The Jungle Den Villas Recreation Association was not designated as a condominium association in the controlling documents.

²³ Auditor General Report 10787, dated November 1986, at 14.

²⁴ *Id* at 32.

²⁵ *Downey v. Jungle Den Villas Recreation Association, Inc.*, 525 So.2d 438 (Fla. 5th DCA 1988), *review denied*, 536 So.2d 244 (Fla. 1988).

The issue in *Jungle Den* was whether Jungle Den Villas Recreation Association met the definition of “association” in Chapter 718, F.S. The Fifth District Court of Appeals created a two-pronged test for making such a determination: the constituency test and the function test. The constituency test, used in *Raines* and *Siegel*, required that an “association” as defined in Chapter 718, F.S., consist exclusively of condominium unit owners. The function test required the court to look at how an association was being managed. If the functions and actions of an association are “in substance and in equity” those of a condominium association, then the entity would meet the function test regardless of its designation or the intent behind its formation. A master condominium association that met both tests was considered an “association” regulated by Chapter 718, F.S.

The Fifth District Court of Appeals concluded that the Legislature’s intent regarding regulation of condominium associations would be circumvented if the simple act of “setting up an ostensibly independent corporation” would result in the creation of an entity “to perform some of the functions of a condominium association but without the unit owner protection provided by the” Condominium Act.²⁶

In 1988, the Legislature attempted to bring clarity to the area. A comprehensive bill²⁷ was introduced which defined and regulated master condominium associations and brought them under the regulation of Chapter 718, F.S. The bill did not pass.

In 1991, the Legislature²⁸ again addressed master condominium associations by broadening the definition of “association”, as follows:

(2) “Association” means, in addition to those entities responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which condominium unit owners have use rights, where unit owner membership in the association is composed exclusively of condominium unit owners or their elected or appointed representatives and where

²⁶ *Jungle Den* at 441.

²⁷ HB 1613, by Representatives Simon, Dunbar, and Diaz-Balart.

²⁸ CS/CS/HB 1465, originally filed by Representative Silver, was passed into law as Chapter 91-103, Laws of Florida.

membership in the association is a required condition of unit ownership ~~the corporate entity which is responsible for the operation of a condominium.~~ [bold emphasis added, underlining and strikethrough in original]

The apparent intent of the change was to codify the *Jungle Den* decision²⁹ by incorporating the function test into the definition of “association,” thereby bringing master condominium associations under the regulatory umbrella of Chapter 718, F.S. However, because the revision included the word “exclusively”, the definition maintained the “constituency test” and thereby did not encompass all master condominium associations. Nonetheless, the Department of Business and Professional Regulation continued to deny jurisdiction over master condominium association disputes even if the composition of the association was exclusively condominium unit owners if, in the future, non-condominium units might be added to the association.

The 1991 legislation, which amended the definition of “association”, did not address some of the fundamental differences between traditional condominium associations and master condominium associations. Therefore, the statutes still do not clearly provide guidance to master condominium associations that fall under the jurisdiction of Chapter 718, F.S., as to how certain provisions in Chapter 718, F.S., are to apply.

Homeowners’ Association Legislation

In 1992,³⁰ the definition of “association” was changed slightly to the current definition, as follows:

(2) "Association" means, in addition to those entities responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which condominium unit owners have use rights, where unit owner membership in the entity ~~association~~ is composed exclusively of

²⁹ “[I]n recognition of the fact that many felt that *Jungle Den* reached a common sense result, or perhaps to engender consistency, the legislature . . . codified *Jungle Den* . . .” Memorandum from Joseph Adams, Esquire, to Department of Business and Professional Regulation, August 11, 1998, at 6.

³⁰ HB 841, a companion bill to CS/SB 2334, was passed into law as Chapter 92-49, Laws of Florida.

condominium unit owners or their elected or appointed representatives, and where membership in the entity association is a required condition of unit ownership.

In the same act, the Legislature added ss. 617.301-.312, F.S., the first statutes specifically addressing homeowners' associations. A master condominium association not regulated by Chapter 718, F.S., is treated as a homeowners' association, and is thus subject to the provisions of ss. 617.301-.312, F.S. These provisions are somewhat similar to the consumer protections found in the Condominium Act, but are less extensive. Significantly, and unlike the condominium association law, no state agency regulates homeowners' associations. This is so because the Legislature recognized

that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. . . .³¹

Because no state agency has regulatory authority over ss. 617.301-.312, F.S., enforcement is only through court action. One of the most prevalent criticisms of these provisions is the difficulty, time, and expense involved in enforcing the homeowners' association law through the courts.

Recent Studies on Condominium Regulation

In December 1994, the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation prepared its *Report on Mandatory Homeowners' Associations*. The department addressed master condominium associations, stating in pertinent part, as follows:

[The] Division recognizes that Chapters 617 and 718 can overlap in the area of master associations. Master associations are umbrella corporations created to encompass more than one Homeowners' Association or a combination of Homeowners' Associations and condominium associations. While such associations can serve a valuable purpose for the planning and management of large developments, most are currently unregulated or regulated in a limited and somewhat ambiguous manner. Consequently, the Division recommends that master associations be governed by proposals for additions to Chapter 617, Florida Statutes, which permit greater

³¹ Section 617.302(2), F.S.

flexibility than the more restrictive and complicated provisions of Chapter 718, Florida Statutes.³²

The department also addressed the issue of funding the regulation of homeowners' associations:

The Division inquired at each public hearing as to the type and amount of fees Homeowners' Associations and their members would be willing to pay for comprehensive regulation. The Division stated at each public hearing . . . that all regulated entities operate on a pay-as-you-go basis by contribution to the relevant trust fund. Significantly, the question of funding was largely ignored throughout the three days of public hearings by those in attendance, and remained unanswered by later correspondence. Consequently, the Division recommends that the focus of any new legislation be to provide expanded legal rights and remedies such as the use of arbitration enforceable throughout the civil court system, but not the creation of a new regulatory body, or the addition of regulatory authority to an existing state agency.³³

The Department of Business and Professional Regulation also made a number of other suggestions as to possible changes or additions to the homeowners' associations provisions in ss. 617.301-.312, F.S., in areas such as meeting notices, official records, and turnover of the association by the developer.

In March 1998, the Office of Program Policy Analysis and Government Accountability issued its *Review of the Bureau of Condominiums Complaint Investigation Process*. In the review, the Office of Program Policy Analysis and Government Accountability commented about the length of time³⁴ necessary for the Department of Business and Professional Regulation to process complaints filed against condominium associations:

³² *Report on Mandatory Homeowners' Associations*, by Department of Business and Professional Regulation, December 1994, at 8.

³³ *Id* 8-9.

³⁴ For instance, some complaints would be "in the hopper" for over one year, only to be dismissed for lack of jurisdiction under the exclusivity test. This issue is not restricted to recent times. In 1986, the Auditor General Report 10787 made similar comments regarding delays in determining jurisdiction. Then, the goal for dismissal for lack of jurisdiction was ten days, the average was 37 days (down from 47 days in 1984), and the longest found by the Auditor General was 153 days. By law, the Department of Business and Professional Regulation shall determine jurisdiction within 30 days of receipt of a complaint, and shall resolve the complaint within 90 days of receipt of the original complaint or of timely requested additional information. Section 718.501(1)(n), F.S.

Although the bureau often receives complaints regarding master associations, it frequently determines, after a lengthy investigation, that it has no jurisdiction over the association or that statutory provisions do not apply to the complaint.³⁵

The Office of Program Policy Analysis and Government Accountability also found that, during the 1996-97 fiscal year, the department dismissed 682 complaints, over half of those filed, because either the issues were outside the department's jurisdiction or the cases "did not lend themselves to investigation."³⁶ There is no indication of how many of these dismissals were because of lack of jurisdiction over a master condominium association. The report recommended a change to Chapter 718, F.S., to remove department's jurisdiction over master condominium associations.³⁷ The department, in its response to the report, agreed with the recommendation.³⁸

Recent Legislation

In 1995, the Legislature passed Committee Substitute for House Bill 1687, which became law as Chapter 95-274, Laws of Florida. The act made several changes recommended in the *Report on Mandatory Homeowners' Associations*,³⁹ to the homeowners' association provisions in ss. 617.301-.312, F.S., including: requiring specific voting procedures, providing a right to inspect association records, and regulating the turnover

³⁵ The Office of Program Policy Analysis and Government Accountability, Report No. 97-62, entitled *Review of the Bureau of Condominiums Complaint Investigation Process*, March 1998, at 4.

³⁶ *Id.*

³⁷ *Id.* at 5.

³⁸ *Id.* at 8.

³⁹ *Report on Mandatory Homeowners' Associations*, by Department of Business and Professional Regulation, December 1994.

process. The act also provided a disclosure requirement applicable to sellers of residential property subject to a homeowners' association.⁴⁰

The Legislature again addressed master condominium associations in the 1998 Session. Senate Bill 972, as filed, defined "master condominium association" and "master declaration" and provided regulation of master condominium associations under Chapter 718, F.S. The master condominium association provisions were removed from the bill by the Senate Committee on Regulated Industries. Senate Bill 972 died in the Senate Judiciary Committee.

The Legislature once again in 1999 addressed master condominium associations. The Legislative Discussion Group⁴¹ prepared draft legislation that created an additional part to Chapter 718, F.S., which regulated master condominium associations. When the draft came before the House Committee on Real Property and Probate, the committee removed the new part on master condominium associations, replacing it with a requirement that the Department of Business and Professional Regulation draft legislation regarding master condominium associations for the year 2000 session. The proposed committee bill was then filed as House Bill 2171, which passed the House but died on the Senate calendar as did its companion Senate Bill 2274. As of the date of this report, no bill addressing the regulation of master condominium associations has been prefiled. A bill⁴² that would create a Condominium Study Commission to study various issues regarding condominiums has been filed for the 2000 session. The bill suggests six specific issues for study by the Commission:

⁴⁰ Section 689.26, F.S. creates a Disclosure Summary form in which the seller is to disclose to the purchaser that: membership in a homeowners' association is mandatory; restrictive covenants are applicable to the property; the purchaser will have to pay regular assessments; failure to pay the assessments may result in a lien against the property; the amount (if any) of separate recreational or use fees; and whether or not the covenants can be amended without the approval of the association membership.

⁴¹ Participants in the Legislative Discussion Group included representatives of developers and associations, regulatory staff, legal practitioners in the subject area, staff from the Legislature, and other interested parties from around the state. See discussion *infra* at 1, 8.

⁴² House Bill 507, filed by Representative Minton. Senate Bill 264, filed by Senator Geller, is identical.

The continued tension between unit owners and boards of directors, the election process for the board of directors, the effectiveness of the Division of Florida Land Sales, Condominiums, and Mobile Homes in responding to complaints from unit owners, the relationship of rights and responsibilities of unit owners and the board, the method of enforcement of condominium liens, and whether the condominium should be able to foreclose condominium liens against individual units.

Although master condominium associations is not one of the six issues listed, the general language in the bill stating that the Commission may look at “issues relating to condominiums” is sufficiently broad to include the master condominium association issue.

Current Situation

[T]here is little debate amongst Florida community association legal practitioners, community association managers, volunteer board members, unit owners, accountants, insurance professionals, developers, industry coalition groups, columnists, and the Division of Florida Land Sales, Condominiums, and Mobile Homes . . . that the ‘master association issue’ is a vexatious one. The primary ‘problem’ is that Section 718, Florida Statutes, . . . does not neatly fit actual operational practices nor the practicalities of operating many condominium master associations.⁴³

The definition of “association” at s. 718.103(2), F.S., does not include all master condominium associations which contain condominium units. For example, an association that includes one single family home would not meet the definition because its membership is not exclusively condominium unit owners. The concern is that unregulated master condominium associations have the legal right to charge assessments on condominium units, to place liens on units that do not pay, and to eventually foreclose those liens. Unlike a traditional condominium association, a master condominium association can have a board that is not elected by the general membership. There is little statutory regulation of assessments or accounting, and no state agency that has the authority to audit the books and records of such an unregulated master condominium association, or to assist members with disputes.

It is relatively simple for a developer creating a master condominium association to intentionally prevent regulation of the master condominium association pursuant to Chapter 718, F.S. The developer simply must make certain that at least one member of the association is not a condominium unit owner. Practice guidelines for attorneys show exactly how to do this.⁴⁴

⁴³ Memorandum from Joseph Adams, Esquire, to the Department of Business and Professional Regulation, dated August 11, 1998, at 1.

⁴⁴ See, *Florida Condominium Law and Practice* (2nd edition, 1998, The Florida Bar).

There are currently 1,013,687 condominium units in Florida.⁴⁵ The Department of Business and Professional Regulation does not know how many master condominium associations exist.⁴⁶

Currently, condominium unit owners pay a \$4.00 per unit/per year fee for regulation.⁴⁷ The Department of Business and Professional Regulation uses these fees, plus revenues from initial filings and from fines, to fund condominium regulation. For the 1998-99 fiscal year, the Bureau of Condominiums of the Department of Business and Professional Regulation⁴⁸ had a total income of \$5,289,299, and expenses of \$5,603,368.⁴⁹ The Land Sales, Condominiums and Mobile Homes Trust Fund balance as of June 30, 1999, was \$6,814,772, and the Unencumbered Cash Balance (which includes trust fund monies) was \$7,029,585.⁵⁰ The Bureau of Condominiums received 1,352 formal complaints in the 1997-1998 fiscal year,⁵¹ and opened 1,118 enforcement cases in the 1998-1999 fiscal year.⁵²

⁴⁵ As of June 30, 1999. Letter from Cynthia Henderson, Secretary of the Department of Business and Professional Regulation, to the Office of Program Policy Analysis and Government Accountability, dated September 30, 1999, at 3.

⁴⁶ Letter from the Office of Program Policy Analysis and Government Accountability to Representative Larry Crow, dated November 18, 1997.

⁴⁷ F.A.C. 61B-23.002. The fee is actually charged against each association, but is passed on to the unit owners through assessments.

⁴⁸ The Bureau of Condominiums also regulates cooperatives under Chapter 719, F.S. Although Chapter 719, F.S., is very similar to Chapter 718, F.S., the master condominium association issue is apparently not an issue to cooperative associations.

⁴⁹ Division of Florida Land Sales, Condominiums and Mobile Homes 2000-2001 budget, at 65.

⁵⁰ *Id* at 69.

⁵¹ Department of Business and Professional Regulation 1997-1998 Annual Report, at 68.

⁵² Letter from Cynthia Henderson, Secretary of the Department of Business and Professional Regulation, to the Office of Program Policy Analysis and Government Accountability, dated September 30, 1999, at 3.

Alternatives

There are a number of possible alternatives available for consideration with regard to the issues surrounding master condominium associations. Staff has identified several alternatives for consideration.

Amend the definition of “association” in Chapter 718, F.S., to exclude all master condominium associations

Adoption of this alternative would require a public policy determination that supervision of master condominium associations by a regulatory agency is not necessary, not unlike that expressed at s. 617.302(2), F.S., regarding homeowners’ associations. Adoption of this alternative would not prevent future expansion of consumer protections within ss. 617.301-.312, F.S.⁵³

Currently, the Department of Business and Professional Regulation does not see the need to regulate master condominium associations. The department has expressed this position on several occasions in the past:

- *Report on Mandatory Homeowners’ Associations*, page 8 (The Department of Business and Professional Regulation, December 1994).

⁵³ The relationship between the homeowner and the association is a form of contract. Article I, section 10 of the Florida Constitution states: “No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.” Although in the past the effect of this provision of the Constitution was that “virtually no degree of contract impairment is tolerable,” the current view of the contract clause is: “To determine how much impairment is tolerable, we must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy. Obviously, this becomes a balancing process to determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state's objective, or whether it unreasonably intrudes into the parties' bargain to a degree greater than is necessary to achieve that objective.” *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774, 780 (Fla. 1979). Accordingly, those future expansions to the statute perhaps may not affect associations then in existence.

- *Condominium and Cooperative Study*, page 73 (The Department of Business and Professional Regulation, January 1996).
- The response by the Department of Business and Professional Regulation to Report 97-62 by the Office of Program Policy Analysis and Government Accountability, page 8.
- Memorandum dated January 12, 1998, from Martha Barrera, Esquire, of the Department of Business and Professional Regulation, to Lynda Goodgame, Esquire, then general counsel of the Department of Business and Professional Regulation.

The Department of Business and Professional Regulation's position regarding regulation of master condominium associations has, however, varied. For instance, the department agreed with a 1986 performance audit wherein the Office of the Auditor General recommended that master condominium associations be regulated by the department.⁵⁴ Additionally, the current website maintained by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation, provides the following information:

Many calls are received by individuals with these questions [regarding homeowners associations]. . . . **Regrettably**, the operation of homeowners associations is not within the authority of the Division.” [emphasis added].⁵⁵

The Department of Business and Professional Regulation has identified numerous problems with applying Chapter 718, F.S., to master condominium associations.⁵⁶ Those problems include:

⁵⁴ Auditor General Report 10787, dated November 1986, at 14.

⁵⁵ Commonly Asked Questions, at <http://www.state.fl.us/dbpr/html/lsc/lscfaqs.htm>, October 1, 1999.

⁵⁶ Memorandum from Martha F. Barrera, Esquire, of the Department of Business and Professional Regulation, to Lynda Goodgame, Esquire, then general counsel of the Department of Business and Professional Regulation, regarding “Master Associations”, dated January 12, 1998.

- Determining which entity, the individual condominium associations or the master condominium association, is responsible for maintenance of the common areas, or for provision of insurance.
- Determining which entity may grant easements across, or may convey out portions of, the common areas.
- Determining which entity has lien priority for unpaid assessments.
- Determining correct election procedures, including correct apportionment of seats on the master condominium association board and matters of recall.
- Determining the correct time, place, and manner to compel transfer of association control from the developer to the owners.

The Department of Business and Professional Regulation suggests that the main reason for supporting removal of master condominium associations from regulation under Chapter 718, F.S., is the exhaustive review necessary to determine, under current law, whether an association meets the statutory definition of “association” at s. 718.103(2), F.S. The department recommends changing the definition to specifically exclude master condominium associations.

Nonetheless, while the department argues that extensive review of complaints to determine jurisdiction is a significant problem,⁵⁷ the “Instructions for Filing a Condominium / Cooperative Complaint” form⁵⁸ promulgated by the department does not mention the issue. That form lists three issues regarding condominiums where the Department of Business and Professional Regulation “does not generally investigate,” and four other issues that it will not

⁵⁷ In August 1998, a review of the “Final Order Index” of published arbitration decisions found only three reported cases where the definition of association appeared to be central to the adjudication of the dispute. By contrast, that same index showed 56 decisions on pet disputes. Memorandum from Joseph Adams, Esquire, to the Department of Business and Professional Regulation, August 11, 1998, at 10.

⁵⁸ Form can be found at http://www.state.fl.us/dbpr/forms/lsc/con/complaint_instructions.pdf (dated 2/99). The complaint form can be found at http://www.state.fl.us/dbpr/forms/lsc/con/complaint_form.pdf (dated 2/99).

investigate. A complaint about a master condominium association that is not regulated by the department is not one of those listed issues.

The Department of Business and Professional Regulation also supports its position that regulation of all master condominium associations should be removed from Chapter 718, F.S., by referring to a study conducted by the department in 1996. The department cites to the result of one question in that study where only 26 percent of persons polled stated that they would pay more to the department for enforcement of statutes regulating master condominium associations.⁵⁹ However, 55 percent of the same group answered “yes” to the question: “Do you think there is a need for the Condominium Act to include provisions that address master associations?”⁶⁰ Furthermore, there are concerns regarding the methodology of that study.

The Office of Program Policy Analysis and Government Accountability has suggested that education programs for condominium owners on the differences between traditional condominium associations and master condominium associations may relieve some of the administrative burdens placed on the Department of Business and Professional Regulation because of the issue of jurisdiction over master condominium associations.

The Legislature should direct the bureau to develop an education program advising condominium associations and condominium unit buyers about the differences between master associations and traditional condominium associations.⁶¹

The website maintained by the Department of Business and Professional Regulation contains a public education link entitled “Commonly Asked Questions and Answers” about condominium associations. None of the 28 questions deal with, or explain, the difference

⁵⁹ The poll question was: “If the Condominium Act included provisions addressing master associations, would you be willing to pay additional fees to the Division for enforcement of the new provisions?” *Condominium and Cooperative Study*, by Department of Business and Professional Regulation, January 1996, at 144.

⁶⁰ *Id* at 143.

⁶¹ The Office of Program Policy Analysis and Government Accountability, Report No. 97-62, Review of the Bureau of Condominiums Complaint Investigation Process, March 1998, at 5-6.

between traditional condominium associations and master condominium associations.⁶² Two years after the recommendation that the department develop an education program, the department has not developed the suggested education program because

[t]he issue of master associations continues to be discussed for legislation. The [Department of Business and Professional Regulation] does not intend to expand its education program in this area until the legislature takes steps to clarify its directive to us in the statute.⁶³

Amend the definition of “association” in Chapter 718, F.S., to include all master condominium associations

The Legislature could amend the definition of “association” to include any entity “authorized to place assessments, liens, or fines against a condominium unit.”⁶⁴ This would capture all master condominium associations within the Department of Business and Professional Regulation’s jurisdiction and thus greatly simplify the review process for complaints filed against master condominium associations. Accordingly, the consumer protections of the Condominium Act would be made applicable to any association that manages common areas for which a condominium unit owner pays assessments. This is the position advocated by certain condominium owners and associations, but is contrary to the department’s position favoring deregulation of all master condominium associations.

Persons advocating extension of the condominium laws to every master condominium association argue that, despite the applicable regulations found in ss. 617.301-.312, F.S., there are still consumer protections in Chapter 718, F.S., that are not included in ss. 617.301-.312, F.S., which should be made applicable to all master condominium associations. Those consumer protections include: construction warranty rights, post-turnover audit

⁶² At http://www.state.fl.us/dbpr/html/lsc/faq_co.html, October 1, 1999.

⁶³ Letter from Cynthia A. Henderson, Secretary of the Department of Business and Professional Regulation, to John W. Turcotte, Director of the Office of Program Policy Analysis and Government Accountability, dated September 30, 1999.

⁶⁴ Suggested language is from Auditor General Report 10787, dated November 1986.

requirements, clearer turnover guidelines, the right to cancel onerous pre-turnover contracts made by the developer-controlled board; and the right of a unit owner to speak at board meetings, to receive a substantive response to a complaint or inquiry, and to receive thorough year-end financial reports.⁶⁵

The fiscal impact of such expanded regulation would need to be determined in order to make an informed decision regarding such a significant policy decision. This alternative would require a policy determination that regulation is appropriate despite objection by the regulatory agency.

Adopt compromise position

A compromise position exists between the above alternatives; that is, remove all master condominium associations from regulation under Chapter 718, F.S., thereby placing all of them under the regulatory umbrella of ss. 617.301-.312, F.S., and increase the consumer protections available pursuant to ss. 617.301-.312, F.S. This alternative would increase consumer protections to members of master condominium associations and to homeowners' associations in general, and there would not be a regulatory agency involved. Alternatively, the changes to ss. 617.301-.312, F.S., might only be made applicable to master condominium associations. However, because consumers can only resort to the court system for redress of grievances under ss. 617.301-.312, F.S., this position may cause an indeterminate increase in required court-related expenses.

Study the issue further

The positions and statements of the competing factions are inconsistent. No reliable hard data exists. If change is needed, the manner and form of the change should be supported

⁶⁵ Memorandum from Joseph Adams, Esquire, to the Department of Business and Professional Regulation, August 11, 1998, at 10.

by facts and data. Any change to the law, however, will be controversial, and will probably incur strong objections.

Further study of cases dismissed by the Department of Business and Professional Regulation for lack of jurisdiction has previously been suggested. The Office of Program Policy Analysis and Government Accountability, states:

During the 1996-97 fiscal year, the bureau closed 682 complaints because the issues raised in these cases were outside the bureau's jurisdiction or did not lend themselves to investigation. This represented over half of the complaints received by the bureau during the year. While it is appropriate for the bureau to dismiss cases [in which] it cannot take action, it should periodically examine these cases to determine whether they represent areas where changes in the bureau's activities are needed to better protect consumers. If, for example, the bureau began receiving many complaints relating to a new type of association fee, it could determine that it needed to change its public information efforts or seek statutory authority to address this issue. This would enable the bureau to better recognize and adapt to changes in the condominium industry and enhance the protection it can provide to condominium owners. . . . We also recommend the bureau periodically examine cases that fall outside its jurisdiction or did not lend themselves to investigation to determine if changes in the bureau's activities are needed to better protect consumers. If the bureau determines it needs additional authority it should propose statutory revisions for the Legislature's consideration.⁶⁶

The Office of Program Policy Analysis and Government Accountability also noted that there were a "number of" complaints about master condominium associations, but did not state exactly how many such complaints regarding master condominium associations were actually received by the Department of Business and Professional Regulation.⁶⁷ By contrast, the department recently stated that it "has dealt with only a handful of cases concerning master associations."⁶⁸ How many cases that is is not described in quantitative terms.

⁶⁶ The Office of Program Policy Analysis and Government Accountability, Report No. 97-62, Review of the Bureau of Condominiums Complaint Investigation Process, March 1998, at 4 and 6.

⁶⁷ *Id* at 4.

⁶⁸ Memorandum from Martha F. Barrera, Esquire, of the Department of Business and Professional Regulation, to Lynda Goodgame, Esquire, then general counsel of the Department of Business and Professional Regulation, regarding "Master Associations," dated January 12, 1998, at 18.

To date, the Department of Business and Professional Regulation has not started examining dismissed cases to determine the reason for dismissal. According to the department, it cannot, with current administrative and computer systems, perform this examination:

The bureau's current database is not able to capture this information. The bureau has developed a prototype database that should facilitate the compilation of reliable data on complaints closed due to lack of jurisdiction, and on other aspects of enforcement performance. The prototype is designed not only to count the numbers of cases and issues closed due to lack of jurisdiction, but to categorize issues closed due to lack of jurisdiction into 12 subcategories and to calculate summary statistics for each subcategory. The proposed subcategories are: Misrepresentation; Breach of Fiduciary Duty; Misconduct by Manager; Criminal Violations; Fair-Housing-Act Violations; Land-Lord-Tenant-Act Violations; Corporations-Act-Violations; Selective Enforcement by Association; Nuisance; Document Violations; Developer Warranties; and Miscellaneous.⁶⁹

Closing a complaint filed against a master condominium association that does not meet the definition of "association" pursuant to s. 718.103(2), F.S., is not one of the 12 categories that the Department of Business and Professional Regulation currently intends to track in the future.

A full review of master condominium association issues would require analysis of, at a minimum:

1. Data showing the actual number of complaints received regarding master condominium associations, the number of those complaints as a percentage of all complaints to the department, and the number of those complaints in relation to the total condominium population in Florida.
2. Information regarding the number of master condominium associations which exist, and their membership size.
3. Cost projections for expanding the Department of Business and Professional Regulation's jurisdiction to include all master condominium associations.

⁶⁹ Letter from Cynthia Henderson, Secretary of the Department of Business and Professional Regulation, to the Office of Program Policy Analysis and Government Accountability, dated September 30, 1999, at 5.

4. A comprehensive study of condominium owners dealing only with the issue of master condominium associations, using a statistically significant sample and correct sampling methods. For instance, rather than asking a generic question like: “Would you be willing to pay additional fees to the Division for enforcement of master condominium association regulations?”,⁷⁰ ask the question stating specific dollar amounts per unit per year. Since condominiums are regulated by a fee of \$4.00 annually, a question asking if the residents would pay, for instance, an additional \$2.00 a year for regulation of master condominium associations would be more informative. The study should also identify the problems that are perceived, and should ask for possible solutions or alternatives.⁷¹

House Bill 507, filed by Representative Minton for the 2000 session, would create a Condominium Study Commission to study various issues regarding condominiums.⁷² The bill provides that the Commission may look at “issues relating to condominiums”. Accordingly, master condominium issues could be included in the Commission’s review.

Maintain the status quo

This alternative requires a policy decision that no legislative action is necessary, and that the court system can continue to build a body of case law regulating the area.

Notwithstanding the reported weaknesses of Chapter 718, F.S., master condominium associations regulated under that statute have existed for years, thus a general understanding of how to apply the condominium law to them has grown by necessity. As for master condominium associations not regulated by Chapter 718, F.S., a number of federal, state, and local laws governing developers, homeowners’ associations, and real estates sales, may provide some form of consumer protections, for example:

⁷⁰ This was the question that garnered only a 26 percent “yes” vote in the polling included in the Condominium and Cooperative Study, January 1996.

⁷¹ Perhaps compilation and review of the data should be done by an independent third party under the supervision of the Office of Program Policy Analysis and Government Accountability, with cooperation and assistance from the Department of Business and Professional Regulation.

⁷² See discussion *infra* at 18.

- Homeowners' association regulations, ss. 617.301-.312, F.S.
- Interstate Land Sales Act, 15 U.S.C. §§ 1701 *et.seq.*
- Florida Uniform Land Sales Practices Law, Chapter 498, F.S.
- Platting laws, Part I, Chapter 177, F.S.
- Cash deposits requirements, s. 501.1375, F.S. (applicable to cash deposits received by contractors and developers).
- Association disclosure requirements that must be given to prospective purchasers of real property subject to association membership, s. 689.26, F.S.
- Chapter 420, F.S., if building low-income or affordable housing.
- Regulation of building contractors, Chapter 489, F.S.
- State environmental laws, Chapter 380, F.S.
- Building Codes, Chapter 553, F.S.
- Construction lien law, Part I, Chapter 713, F.S.
- Fair Housing Acts, 42 U.S.C. §§ 3601 *et.seq.* and Part II, Chapter 760, F.S.
- Criminal fraud, Chapter 817, F.S.
- Mortgage lending guidelines by, for example, FHA, VA, and FNMA.⁷³
- Various county and city zoning, environmental, subdivision, building code, and occupational licensing ordinances.
- Common law actions for breach of contract, negligence, or fraud.

⁷³ Although not mandated by statute, nearly all developers follow mortgage lending guidelines regarding condominium associations and homeowners' associations, because failure to do so makes a property less marketable.

Conclusion

There are concerns that current law does not adequately address master condominium associations. Perhaps those concerns warrant legislative action. However, insufficient data exists from which to determine the scope and severity of the problems related to master condominium associations. Without such information, it is difficult to determine whether to increase or decrease regulation of master condominium associations, and how best to effectuate such change.

Consumer protections have recently been added to ss. 617.301-.312, F.S., but no study has yet been conducted to determine if those protections are sufficient to address the historical complaints about master condominium associations.

Enactment of regulations regarding master condominium associations would require a policy decision that the harm to the public outweighs the reluctance by the Department of Business and Professional Regulation to regulate this area, the objections by certain private interests to regulation, and the cost of increased regulation. Enactment of less restrictive laws regarding master condominium associations would require a policy decision that the cost of regulation exceeds the benefits. Staff has insufficient information to properly present both sides of this policy question, and therefore recommends that an appropriate study of the issue be undertaken.