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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/14/2009	.	
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The Committee on Community Affairs (Deutch) recommended the following:

Senate Amendment (with title amendment)

Between lines 909 and 910
insert:

Section 7. Subsection (16) of section 718.103, Florida Statutes, is amended to read:

718.103 Definitions.—As used in this chapter, the term:

(16) "Developer" means a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business, but does not include:

(a) An owner or lessee of a condominium or cooperative unit



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12 who has acquired the unit for his or her own occupancy; ~~nor~~
13 ~~does it include~~

14 (b) A cooperative association which creates a condominium
15 by conversion of an existing residential cooperative after
16 control of the association has been transferred to the unit
17 owners if, following the conversion, the unit owners will be the
18 same persons who were unit owners of the cooperative and no
19 units are offered for sale or lease to the public as part of the
20 plan of conversion; ~~nor~~

21 (c) A bulk assignee or bulk buyer as defined in s. 718.703;
22 or

23 (d) A state, county, or municipal entity ~~is not a developer~~
24 ~~for any purposes under this act when it is~~ acting as a lessor
25 and not otherwise named as a developer in the declaration of
26 condominium association.

27 Section 8. Subsection (1) of section 718.301, Florida
28 Statutes, is amended to read:

29 718.301 Transfer of association control; claims of defect
30 by association.-

31 (1) When unit owners other than the developer own 15
32 percent or more of the units in a condominium that will be
33 operated ultimately by an association, the unit owners other
34 than the developer shall be entitled to elect no less than one-
35 third of the members of the board of administration of the
36 association. Unit owners other than the developer are entitled
37 to elect not less than a majority of the members of the board of
38 administration of an association:

39 (a) Three years after 50 percent of the units that will be
40 operated ultimately by the association have been conveyed to



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41 purchasers;

42 (b) Three months after 90 percent of the units that will be
43 operated ultimately by the association have been conveyed to
44 purchasers;

45 (c) When all the units that will be operated ultimately by
46 the association have been completed, some of them have been
47 conveyed to purchasers, and none of the others are being offered
48 for sale by the developer in the ordinary course of business;

49 (d) When some of the units have been conveyed to purchasers
50 and none of the others are being constructed or offered for sale
51 by the developer in the ordinary course of business;

52 (e) When the developer files a petition seeking protection
53 in bankruptcy;

54 (f) When a receiver for the developer is appointed by a
55 circuit court and is not discharged within 30 days after such
56 appointment, unless the court determines within 30 days after
57 appointment of the receiver that transfer of control would be
58 detrimental to the association or its members; or

59 (g) Seven years after recordation of the declaration of
60 condominium; or, in the case of an association which may
61 ultimately operate more than one condominium, 7 years after
62 recordation of the declaration for the first condominium it
63 operates; or, in the case of an association operating a phase
64 condominium created pursuant to s. 718.403, 7 years after
65 recordation of the declaration creating the initial phase,
66 whichever occurs first. The developer is entitled to elect at
67 least one member of the board of administration of an
68 association as long as the developer holds for sale in the
69 ordinary course of business at least 5 percent, in condominiums



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70 with fewer than 500 units, and 2 percent, in condominiums with
71 more than 500 units, of the units in a condominium operated by
72 the association. Following the time the developer relinquishes
73 control of the association, the developer may exercise the right
74 to vote any developer-owned units in the same manner as any
75 other unit owner except for purposes of reacquiring control of
76 the association or selecting the majority members of the board
77 of administration.

78 Section 9. Part VII of chapter 718, Florida Statutes,
79 consisting of sections 718.701, 718.702, 718.703, 718.704,
80 718.705, 718.706, 718.707, and 718.708, is created to read:

81 718.701 Short title.—This part may be cited as the
82 “Distressed Condominium Relief Act.”

83 718.702 Legislative intent.—

84 (1) The Legislature acknowledges the massive downturn in
85 the condominium market which has transpired throughout the state
86 and the impact of such downturn on developers, lenders, unit
87 owners, and condominium associations. Numerous condominium
88 projects have either failed or are in the process of failing,
89 whereby the condominium has a small percentage of third-party
90 unit owners as compared to the unsold inventory of units. As a
91 result of the inability to find purchasers for this inventory of
92 units, which results in part from the devaluing of real estate
93 in this state, developers are unable to satisfy the requirements
94 of their lenders, leading to defaults on mortgages.
95 Consequently, lenders are faced with the task of finding a
96 solution to the problem in order to be paid for their
97 investments.

98 (2) The Legislature recognizes that all of the factors



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99 listed in this section lead to condominiums becoming distressed,
100 resulting in detriment to the unit owners and the condominium
101 association on account of the resulting shortage of assessment
102 moneys available to support the financial requirements for
103 proper maintenance of the condominium. Such shortage and the
104 resulting lack of proper maintenance further erodes property
105 values. The Legislature finds that individuals and entities
106 within Florida and in other states have expressed interest in
107 purchasing unsold inventory in one or more condominium projects,
108 but are reticent to do so because of accompanying liabilities
109 inherited from the original developer, which are by definition
110 imputed to the successor purchaser, including a foreclosing
111 mortgagee. This results in the potential purchaser having
112 unknown and unquantifiable risks, and potential successor
113 purchasers are unwilling to accept such risks. The result is
114 that condominium projects stagnate, leaving all parties involved
115 at an impasse without the ability to find a solution.

116 (3) The Legislature finds and declares that it is the
117 public policy of this state to protect the interests of
118 developers, lenders, unit owners, and condominium associations
119 with regard to distressed condominiums, and that there is a need
120 for relief from certain provisions of the Florida Condominium
121 Act geared toward enabling economic opportunities within these
122 condominiums for successor purchasers, including foreclosing
123 mortgagees. Such relief would benefit existing unit owners and
124 condominium associations. The Legislature further finds and
125 declares that this situation cannot be open-ended without
126 potentially prejudicing the rights of unit owners and
127 condominium associations, and thereby declares that the



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128 provisions of this part shall be used by purchasers of
129 condominium inventory for a specific and defined period.
130 718.703 Definitions.—As used in this part, the term:
131 (1) "Bulk assignee" means a person who:
132 (a) Acquires more than seven condominium parcels as set
133 forth in s. 718.707; and
134 (b) Receives an assignment of some or all of the rights of
135 the developer as are set forth in the declaration of condominium
136 or in this chapter by a written instrument recorded as an
137 exhibit to the deed or as a separate instrument in the public
138 records of the county in which the condominium is located.
139 (2) "Bulk buyer" means a person who acquires more than
140 seven condominium parcels as set forth in s. 718.707 but who
141 does not receive an assignment of any developer rights other
142 than the right to conduct sales, leasing, and marketing
143 activities within the condominium.
144 718.704 Assignment and assumption of developer rights by
145 bulk assignee; bulk buyer.—
146 (1) A bulk assignee shall be deemed to have assumed and is
147 liable for all duties and responsibilities of the developer
148 under the declaration and this chapter, except:
149 (a) Warranties of the developer under s. 718.203(1) or s.
150 718.618, except for design, construction, development, or repair
151 work performed by or on behalf of such bulk assignee;
152 (b) The obligation to:
153 1. Fund converter reserves under s. 718.618 for a unit
154 which was not acquired by the bulk assignee; or
155 2. Provide converter warranties on any portion of the
156 condominium property except as may be expressly provided by the



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157 bulk assignee in the contract for purchase and sale executed
158 with a purchaser and pertaining to any design, construction,
159 development, or repair work performed by or on behalf of the
160 bulk assignee;

161 (c) The requirement to provide the association with a
162 cumulative audit of the association's finances from the date of
163 formation of the condominium association as required by s.
164 718.301. However, the bulk assignee shall provide an audit for
165 the period for which the bulk assignee elects a majority of the
166 members of the board of administration;

167 (d) Any liability arising out of or in connection with
168 actions taken by the board of administration or the developer-
169 appointed directors before the bulk assignee elects a majority
170 of the members of the board of administration; and

171 (e) Any liability for or arising out of the developer's
172 failure to fund previous assessments or to resolve budgetary
173 deficits in relation to a developer's right to guarantee
174 assessments, except as otherwise provided in subsection (2).

175
176 Further, the bulk assignee is responsible for delivering
177 documents and materials in accordance with s. 718.705(3). A bulk
178 assignee may expressly assume some or all of the obligations of
179 the developer described in paragraphs (a)-(e).

180 (2) A bulk assignee receiving the assignment of the rights
181 of the developer to guarantee the level of assessments and fund
182 budgetary deficits pursuant to s. 718.116 shall be deemed to
183 have assumed and is liable for all obligations of the developer
184 with respect to such guarantee, including any applicable funding
185 of reserves to the extent required by law, for as long as the



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186 guarantee remains in effect. A bulk assignee not receiving an
187 assignment of the right of the developer to guarantee the level
188 of assessments and fund budgetary deficits pursuant to s.
189 718.116 or a bulk buyer is not deemed to have assumed and is not
190 liable for the obligations of the developer with respect to such
191 guarantee, but is responsible for payment of assessments in the
192 same manner as all other owners of condominium parcels.

193 (3) A bulk buyer is liable for the duties and
194 responsibilities of the developer under the declaration and this
195 chapter only to the extent provided in this part, together with
196 any other duties or responsibilities of the developer expressly
197 assumed in writing by the bulk buyer.

198 (4) An acquirer of condominium parcels is not considered a
199 bulk assignee or a bulk buyer if the transfer to such acquirer
200 was made with the intent to hinder, delay, or defraud any
201 purchaser, unit owner, or the association, or if the acquirer is
202 a person who would constitute an insider under s. 726.102(7).

203 (5) An assignment of developer rights to a bulk assignee
204 may be made by the developer, a previous bulk assignee, or a
205 court of competent jurisdiction acting on behalf of the
206 developer or the previous bulk assignee. At any particular time,
207 there may be no more than one bulk assignee within a
208 condominium, but there may be more than one bulk buyer. If more
209 than one acquirer of condominium parcels receives an assignment
210 of developer rights from the same person, the bulk assignee is
211 the acquirer whose instrument of assignment is recorded first in
212 applicable public records.

213 718.105 Board of administration; transfer of control.-

214 (1) For purposes of determining the timing for transfer of



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215 control of the board of administration of the association to
216 unit owners other than the developer under ss. 718.301(1) (a) and
217 (b), if a bulk assignee is entitled to elect a majority of the
218 members of the board, a condominium parcel acquired by the bulk
219 assignee shall not be deemed to be conveyed to a purchaser, or
220 to be owned by an owner other than the developer, until such
221 condominium parcel is conveyed to an owner who is not a bulk
222 assignee.

223 (2) Unless control of the board of administration of the
224 association has already been relinquished pursuant to s.
225 718.301(1), the bulk assignee is obligated to relinquish control
226 of the association in accordance with s. 718.301 and this part.

227 (3) When a bulk assignee relinquishes control of the board
228 of administration as set forth in s. 718.301, the bulk assignee
229 shall deliver all of those items required by s. 718.301(4).
230 However, the bulk assignee is not required to deliver items and
231 documents not in the possession of the bulk assignee during the
232 period during which the bulk assignee was the owner of
233 condominium parcels. In conjunction with acquisition of
234 condominium parcels, a bulk assignee shall undertake a good
235 faith effort to obtain the documents and materials required to
236 be provided to the association pursuant to s. 718.301(4). To the
237 extent the bulk assignee is not able to obtain all of such
238 documents and materials, the bulk assignee shall certify in
239 writing to the association the names or descriptions of the
240 documents and materials that were not obtainable by the bulk
241 assignee. Delivery of the certificate relieves the bulk assignee
242 of responsibility for the delivery of the documents and
243 materials referenced in the certificate as otherwise required



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244 under ss. 718.112 and 718.301 and this part. The responsibility
245 of the bulk assignee for the audit required by s. 718.301(4)
246 shall commence as of the date on which the bulk assignee elected
247 a majority of the members of the board of administration.

248 (4) If a conflict arises between the provisions or
249 application of this section and s. 718.301, this section shall
250 prevail.

251 (5) Failure of a bulk assignee or bulk buyer to comply with
252 all the requirements contained in this part shall result in the
253 loss of any and all protections or exemptions provided under
254 this part.

255 718.706 Specific provisions pertaining to offering of units
256 by a bulk assignee or bulk buyer.—

257 (1) Before offering any units for sale or for lease for a
258 term exceeding 5 years, a bulk assignee or a bulk buyer shall
259 file the following documents with the division and provide such
260 documents to a prospective purchaser:

261 (a) An updated prospectus or offering circular, or a
262 supplement to the prospectus or offering circular, filed by the
263 creating developer prepared in accordance with s. 718.504, which
264 shall include the form of contract for purchase and sale in
265 compliance with s. 718.503(2);

266 (b) An updated Frequently Asked Questions and Answers
267 sheet;

268 (c) The executed escrow agreement if required under s.
269 718.202; and

270 (d) The financial information required by s. 718.111(13).
271 However, if a financial information report does not exist for
272 the fiscal year before acquisition of title by the bulk assignee



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273 or bulk buyer, or accounting records cannot be obtained in good
274 faith by the bulk assignee or the bulk buyer which would permit
275 preparation of the required financial information report, the
276 bulk assignee or bulk buyer is excused from the requirement of
277 this paragraph. However, the bulk assignee or bulk buyer must
278 include in the purchase contract the following statement in
279 conspicuous type:

280 THE FINANCIAL INFORMATION REPORT REQUIRED UNDER S.
281 718.111(13) FOR THE IMMEDIATELY PRECEDING FISCAL YEAR OF THE
282 ASSOCIATION IS NOT AVAILABLE OR CANNOT BE CREATED BY THE SELLER
283 AS A RESULT OF INSUFFICIENT ACCOUNTING RECORDS OF THE
284 ASSOCIATION.

285 (2) Before offering any units for sale or for lease for a
286 term exceeding 5 years, a bulk assignee shall file with the
287 division and provide to a prospective purchaser a disclosure
288 statement that must include, but is not limited to:

289 (a) A description to the purchaser of any rights of the
290 developer which have been assigned to the bulk assignee;

291 (b) The following statement in conspicuous type:

292 SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE DEVELOPER
293 UNDER S. 718.203(1) OR S. 718.618, AS APPLICABLE, EXCEPT FOR
294 DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY
295 OR ON BEHALF OF SELLER; and

296 (c) If the condominium is a conversion subject to part VI,
297 the following statement in conspicuous type:

298 SELLER HAS NO OBLIGATION TO FUND CONVERTER RESERVES OR TO
299 PROVIDE CONVERTER WARRANTIES UNDER S. 718.618 ON ANY PORTION OF
300 THE CONDOMINIUM PROPERTY EXCEPT AS MAY BE EXPRESSLY REQUIRED OF
301 THE SELLER IN THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE



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302 SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO ANY DESIGN,
303 CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON
304 BEHALF OF THE SELLER.

305 (3) In addition to the requirements set forth in subsection
306 (1), a bulk assignee or bulk buyer must comply with the
307 nondeveloper disclosure requirements set forth in s. 718.503(2)
308 before offering any units for sale or for lease for a term
309 exceeding 5 years.

310 (4) A bulk assignee, while it is in control of the board of
311 administration of the association, may not authorize, on behalf
312 of the association:

313 (a) The waiver of reserves or the reduction of funding of
314 the reserves in accordance with s. 718.112(2)(f)2., unless
315 approved by a majority of the voting interests not controlled by
316 the developer, bulk assignee, and bulk buyer; or

317 (b) The use of reserve expenditures for other purposes in
318 accordance with s. 718.112(2)(f)3., unless approved by a
319 majority of the voting interests not controlled by the
320 developer, bulk assignee, and bulk buyer.

321 (5) A bulk assignee, while it is in control of the board of
322 administration of the association, shall comply with the
323 requirements imposed upon developers to transfer control of the
324 association to the unit owners in accordance with s. 718.301.

325 (6) A bulk assignee or a bulk buyer shall comply with all
326 the requirements of s. 718.302 regarding any contracts entered
327 into by the association during the period the bulk assignee or
328 bulk buyer maintains control of the board of administration.
329 Unit owners shall be afforded all the protections contained in
330 s. 718.302 regarding agreements entered into by the association



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331 before unit owners other than the developer, bulk assignee, or
332 bulk buyer elected a majority of the board of administration.

333 (7) A bulk buyer shall comply with the requirements
334 contained in the declaration regarding any transfer of a unit,
335 including sales, leases, and subleases. A bulk buyer is not
336 entitled to any exemptions afforded a developer or successor
337 developer under this chapter regarding any transfer of a unit,
338 including sales, leases, or subleases.

339 718.707 Time limitation for classification as bulk assignee
340 or bulk buyer.—A person acquiring condominium parcels may not be
341 classified as a bulk assignee or bulk buyer unless the
342 condominium parcels were acquired before July 1, 2011. The date
343 of such acquisition shall be determined by the date of recording
344 of a deed or other instrument of conveyance for such parcels in
345 the public records of the county in which the condominium is
346 located, or by the date of issuance of a certificate of title in
347 a foreclosure proceeding with respect to such condominium
348 parcels.

349 718.708 Liability of developers and others.—An assignment
350 of developer rights to a bulk assignee or bulk buyer does not
351 release the developer from any liabilities under the declaration
352 or this chapter. This part does not limit the liability of the
353 developer for claims brought by unit owners, bulk assignees, or
354 bulk buyers for violations of this chapter by the developer,
355 unless specifically excluded in this part. Nothing contained
356 within this part waives, releases, compromises, or limits the
357 liability of contractors, subcontractors, materialmen,
358 manufacturers, architects, engineers, or any participant in the
359 design or construction of a condominium for any claim brought by



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360 an association, unit owners, bulk assignees, or bulk buyers
361 arising from the design of the condominium, construction
362 defects, misrepresentations associated with condominium
363 property, or violations of this chapter, unless specifically
364 excluded in this part.

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366

367 ===== T I T L E A M E N D M E N T =====

368 And the title is amended as follows:

369 Delete line 66

370 and insert:

371 days under certain circumstances; amending s. 718.103,
372 F.S.; expanding the definition of "developer" to
373 include a bulk assignee or bulk buyer; amending s.
374 718.301, F.S.; revising conditions under which unit
375 owners other than the developer may elect not less
376 than a majority of the members of the board of
377 administration of an association; creating part VII of
378 ch. 718, F.S.; providing a short title; providing
379 legislative findings and intent; defining the terms
380 "bulk assignee" and "bulk buyer"; providing for the
381 assignment of developer rights by a bulk assignee;
382 specifying liabilities of bulk assignees and bulk
383 buyers; providing exceptions; providing additional
384 responsibilities of bulk assignees and bulk buyers;
385 authorizing certain entities to assign developer
386 rights to a bulk assignee; limiting the number of bulk
387 assignees at any given time; providing for the
388 transfer of control of a board of administration;



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389 providing effects of such transfer on parcels acquired
390 by a bulk assignee; providing obligations of a bulk
391 assignee upon the transfer of control of a board of
392 administration; requiring that a bulk assignee certify
393 certain information in writing; providing for the
394 resolution of a conflict between specified provisions
395 of state law; providing that the failure of a bulk
396 assignee or bulk buyer to comply with specified
397 provisions of state law results in the loss of certain
398 protections and exemptions; requiring that a bulk
399 assignee or bulk buyer file certain information with
400 the Division of Florida Condominiums, Timeshares, and
401 Mobile Homes of the Department of Business and
402 Professional Regulation before offering any units for
403 sale or lease in excess of a specified term; requiring
404 that a copy of such information be provided to a
405 prospective purchaser; requiring that certain
406 contracts and disclosure statements contain specified
407 statements; requiring that a bulk assignee or bulk
408 buyer comply with certain disclosure requirements;
409 prohibiting a bulk assignee from taking certain
410 actions on behalf of an association while the bulk
411 assignee is in control of the board of administration
412 of the association and requiring that such bulk
413 assignee comply with certain requirements; requiring
414 that a bulk assignee or bulk buyer comply with certain
415 requirements regarding certain contracts; providing
416 unit owners with specified protections regarding
417 certain contracts; requiring that a bulk buyer comply



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418 with certain requirements regarding the transfer of a
419 unit; prohibiting a person from being classified as a
420 bulk assignee or bulk buyer unless condominium parcels
421 were acquired before a specified date; providing for
422 the determination of the date of acquisition of a
423 parcel; providing that the assignment of developer
424 rights to a bulk assignee does not release a developer
425 from certain liabilities; preserving certain
426 liabilities for certain parties; amending s. 719.108,