

By the Committee on Regulated Industries and Senator Dudley

315-1663B-98

1 A bill to be entitled
2 An act relating to rulemaking authority of the
3 Department of Business and Professional
4 Regulation (RAB); amending s. 718.104, F.S.;
5 requiring notification; amending s. 718.112,
6 F.S.; providing requirements relating to
7 association meetings; amending s. 718.117,
8 F.S.; requiring notification; amending s.
9 718.301, F.S.; providing rulemaking authority
10 for requirements relating to the transition of
11 a condominium; amending s. 718.403, F.S.;
12 requiring filing of recording information;
13 amending s. 718.502, F.S.; providing certain
14 requirements prior to the closure on any
15 contract for sale or lease of over 5 years;
16 providing rulemaking authority for requirements
17 relating to filing and review programs and
18 timetables; amending s. 718.503, F.S.;
19 providing requirements relating to the closure
20 of a transaction for the purchase of a
21 condominium unit; creating s. 718.621, F.S.;
22 providing rulemaking authority for requirements
23 relating to condominium conversion; providing
24 an effective date.

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

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28 Section 1. Subsection (2) of section 718.104, Florida
29 Statutes, is amended to read:

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1 718.104 Creation of condominiums; contents of
2 declaration.--Every condominium created in this state shall be
3 created pursuant to this chapter.

4 (2) A condominium is created by recording a
5 declaration in the public records of the county where the land
6 is located, executed and acknowledged with the requirements
7 for a deed. All persons who have record title to the interest
8 in the land being submitted to condominium ownership, or their
9 lawfully authorized agents, must join in the execution of the
10 declaration. Upon the recording of the declaration, or an
11 amendment adding a phase to the condominium under s.
12 718.403(6), all units described in the declaration or phase
13 amendment as being located in or on the land then being
14 submitted to condominium ownership shall come into existence,
15 regardless of the state of completion of planned improvements
16 in which the units may be located. Upon recording the
17 declaration of condominium pursuant to this section, the
18 developer shall file the recording information with the
19 division within 30 business days on a form prescribed by the
20 division.

21 Section 2. Paragraphs (b) and (c) of subsection (2) of
22 section 718.112, Florida Statutes, are amended to read:

23 718.112 Bylaws.--

24 (2) REQUIRED PROVISIONS.--The bylaws shall provide for
25 the following and, if they do not do so, shall be deemed to
26 include the following:

27 (b) Quorum; voting requirements; proxies.--

28 1. Unless a lower number is provided in the bylaws,
29 the percentage of voting interests required to constitute a
30 quorum at a meeting of the members shall be a majority of the
31 voting interests. Unless otherwise provided in this chapter

1 or in the declaration, articles of incorporation, or bylaws,
2 and except as provided in subparagraph (d)3., decisions shall
3 be made by owners of a majority of the voting interests
4 represented at a meeting at which a quorum is present.

5 2. Except as specifically otherwise provided herein,
6 after January 1, 1992, unit owners may not vote by general
7 proxy, but may vote by limited proxies substantially
8 conforming to a limited proxy form adopted by the division.
9 Limited proxies and general proxies may be used to establish a
10 quorum. Limited proxies shall be used for votes taken to
11 waive or reduce reserves in accordance with subparagraph
12 (f)2.; for votes taken to waive financial statement
13 requirements as provided by s. 718.111(14); for votes taken to
14 amend the declaration pursuant to s. 718.110; for votes taken
15 to amend the articles of incorporation or bylaws pursuant to
16 this section; and for any other matter for which this chapter
17 requires or permits a vote of the unit owners. Except as
18 provided in paragraph (d), after January 1, 1992, no proxy,
19 limited or general, shall be used in the election of board
20 members. General proxies may be used for other matters for
21 which limited proxies are not required, and may also be used
22 in voting for nonsubstantive changes to items for which a
23 limited proxy is required and given. Notwithstanding the
24 provisions of this subparagraph, unit owners may vote in
25 person at unit owner meetings. Nothing contained herein shall
26 limit the use of general proxies or require the use of limited
27 proxies for any agenda item or election at any meeting of a
28 timeshare condominium association.

29 3. Any proxy given shall be effective only for the
30 specific meeting for which originally given and any lawfully
31 adjourned meetings thereof. In no event shall any proxy be

1 valid for a period longer than 90 days after the date of the
2 first meeting for which it was given. Every proxy is
3 revocable at any time at the pleasure of the unit owner
4 executing it.

5 4. A member of the board of administration or a
6 committee may join by written concurrence in any action taken
7 at a meeting of the board or committee, but such concurrence
8 may not be used for the purposes of creating a quorum.

9 5. When any of the board or committee members meet by
10 telephone conference, those board or committee members
11 attending by telephone conference may be counted toward
12 obtaining a quorum and may vote by telephone. A telephone
13 speaker must be used so that the conversation of those board
14 or committee members attending by telephone may be heard by
15 the board or committee members attending in person as well as
16 by any unit owners present at a meeting.

17 (c) Board of administration meetings.--Meetings of the
18 board of administration at which a quorum of the members is
19 present shall be open to all unit owners. Any unit owner may
20 tape record or videotape meetings of the board of
21 administration. The right to attend such meetings includes
22 the right to speak at such meetings with reference to all
23 designated agenda items. The division shall adopt reasonable
24 rules governing the tape recording and videotaping of the
25 meeting. The association may adopt written reasonable rules
26 governing the frequency, duration, and manner of unit owner
27 statements. Adequate notice of all meetings, which notice
28 shall specifically incorporate an identification of agenda
29 items, shall be posted conspicuously on the condominium
30 property at least 48 continuous hours preceding the meeting
31 except in an emergency. Any item not included on the notice

1 may be taken up on an emergency basis by at least a majority
2 plus one of the members of the board. Such emergency action
3 shall be noticed and ratified at the next regular meeting of
4 the board. However, written notice of any meeting at which
5 nonemergency special assessments, or at which amendment to
6 rules regarding unit use, will be considered shall be mailed
7 or delivered to the unit owners and posted conspicuously on
8 the condominium property not less than 14 days prior to the
9 meeting. Evidence of compliance with this 14-day notice shall
10 be made by an affidavit executed by the person providing the
11 notice and filed among the official records of the
12 association. Upon notice to the unit owners, the board shall
13 by duly adopted rule designate a specific location on the
14 condominium property or association property upon which all
15 notices of board meetings shall be posted. If there is no
16 condominium property or association property upon which
17 notices can be posted, notices of board meetings shall be
18 mailed or delivered at least 14 days before the meeting to the
19 owner of each unit. Notice of any meeting in which regular
20 assessments against unit owners are to be considered for any
21 reason shall specifically contain a statement that assessments
22 will be considered and the nature of any such assessments.
23 Meetings of a committee to take final action on behalf of the
24 board or make recommendations to the board regarding the
25 association budget are subject to the provisions of this
26 paragraph. Meetings of a committee that does not take final
27 action on behalf of the board or make recommendations to the
28 board regarding the association budget are subject to the
29 provisions of this section, unless those meetings are exempted
30 from this section by the bylaws of the association.
31 Notwithstanding any other law, the requirement that board

1 meetings and committee meetings be open to the unit owners is
2 inapplicable to meetings between the board or a committee and
3 the association's attorney, with respect to proposed or
4 pending litigation, when the meeting is held for the purpose
5 of seeking or rendering legal advice.

6 Section 3. Subsection (1) of section 718.117, Florida
7 Statutes, is amended to read:

8 718.117 Termination.--

9 (1) Unless otherwise provided in the declaration, the
10 condominium property may be removed from the provisions of
11 this chapter only by consent of all of the unit owners,
12 evidenced by a recorded instrument to that effect, and upon
13 the written consent by all of the holders of recorded liens
14 affecting any of the condominium parcels. When the board of
15 directors intends to terminate or merge the condominium, or
16 dissolve or merge the association, the boards shall so notify
17 the division before taking any action to terminate or merge
18 the condominium or the association. Upon recordation of the
19 instrument evidencing consent of all of the unit owners to
20 terminate the condominium, the association within 30 business
21 days shall notify the division ~~within 30 working days~~ of the
22 termination and the date the document was recorded, the county
23 where the document was recorded, and the book and page number
24 of the public records where the document was recorded, and
25 shall provide the division a copy of the recorded termination
26 notice certified by the clerk.

27 Section 4. Subsection (6) is added to section 718.301,
28 Florida Statutes, to read:

29 718.301 Transfer of association control.--

30 (6) The division may adopt rules administering the
31 provisions of this section.

1 Section 5. Subsection (8) is added to section 718.403,
2 Florida Statutes, to read:

3 718.403 Phase condominiums.--

4 (8) Upon recording the declaration of condominium or
5 amendments adding phases pursuant to this section, the
6 developer shall file the recording information with the
7 division within 30 working days on a form prescribed by the
8 division.

9 Section 6. Subsection (1) of section 718.502, Florida
10 Statutes, is amended to read:

11 718.502 Filing prior to sale or lease.--

12 (1)(a) A developer of a residential condominium or
13 mixed-use condominium shall file with the division one copy of
14 each of the documents and items required to be furnished to a
15 buyer or lessee by ss. 718.503 and 718.504, if applicable.
16 Until the developer has so filed, a contract for sale of a
17 unit or lease of a unit for more than 5 years shall be
18 voidable by the purchaser or lessee prior to the closing of
19 his or her purchase or lease of a unit.

20 (b) A developer may not close on any contract for sale
21 or contract for a lease period of more than 5 years until the
22 developer prepares and files with the division documents
23 complying with the requirements of this chapter and the rules
24 adopted by the division and until the division notifies the
25 developer that the filing is proper and the developer prepares
26 and delivers all documents required by section 718.503(1)(b)
27 to the prospective buyer.

28 (c) The division by rule may develop filing, review,
29 and examination requirements and relevant timetables to ensure
30 compliance with the notice and disclosure provisions of this
31 section.

1 Section 7. Subsection (1) of section 718.503, Florida
2 Statutes, is amended to read:

3 718.503 Developer disclosure prior to sale;
4 nondeveloper unit owner disclosure prior to sale;
5 voidability.--

6 (1) DEVELOPER DISCLOSURE.--

7 (a) Contents of contracts.--Any contract for the sale
8 of a residential unit or a lease thereof for an unexpired term
9 of more than 5 years shall:

10 1. Contain the following legend in conspicuous type:
11 THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN
12 NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER
13 THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND
14 RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED
15 TO HIM OR HER BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA
16 STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY
17 DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL
18 WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF
19 ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING
20 IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED
21 WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT.
22 BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE
23 THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS
24 REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL
25 TERMINATE AT CLOSING.

26 2. Contain the following caveat in conspicuous type on
27 the first page of the contract: ORAL REPRESENTATIONS CANNOT
28 BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE
29 DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE
30 MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION
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1 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A
2 BUYER OR LESSEE.

3 3. If the unit has been occupied by someone other than
4 the buyer, contain a statement that the unit has been
5 occupied.

6 4. If the contract is for the sale or transfer of a
7 unit subject to a lease, include as an exhibit a copy of the
8 executed lease and shall contain within the text in
9 conspicuous type: THE UNIT IS SUBJECT TO A LEASE (OR
10 SUBLEASE).

11 5. If the contract is for the lease of a unit for a
12 term of 5 years or more, include as an exhibit a copy of the
13 proposed lease.

14 6. If the contract is for the sale or lease of a unit
15 that is subject to a lien for rent payable under a lease of a
16 recreational facility or other commonly used facility, contain
17 within the text the following statement in conspicuous type:
18 THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO
19 A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMONLY USED
20 FACILITIES. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF
21 THE LIEN.

22 7. State the name and address of the escrow agent
23 required by s. 718.202 and state that the purchaser may obtain
24 a receipt for his or her deposit from the escrow agent upon
25 request.

26 8. If the contract is for the sale or transfer of a
27 unit in a condominium in which timeshare estates have been or
28 may be created, contain within the text in conspicuous type:
29 UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES.
30 The contract for the sale of a fee interest in a timeshare
31 estate shall also contain, in conspicuous type, the following:

1 FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS
2 LEVIED BY TAXING AUTHORITIES AGAINST A FEE INTEREST IN A
3 TIMESHARE ESTATE, THE MANAGING ENTITY IS GENERALLY CONSIDERED
4 THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE THE RIGHT TO
5 CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY RELATING TO YOUR
6 TIMESHARE ESTATE PURSUANT TO THE PROVISIONS OF CHAPTER 194,
7 FLORIDA STATUTES.

8 (b) Copies of documents to be furnished to prospective
9 buyer or lessee.--Until such time as the developer has
10 furnished the documents listed below to a person who has
11 entered into a contract to purchase a residential unit or
12 lease it for more than 5 years, the contract may be voided by
13 that person, entitling the person to a refund of any deposit
14 together with interest thereon as provided in s. 718.202. The
15 contract may be terminated by written notice from the proposed
16 buyer or lessee delivered to the developer within 15 days
17 after the buyer or lessee receives all of the documents
18 required by this section. The developer may not close for 15
19 days following the execution of the agreement and delivery of
20 the documents to the buyer as evidenced by a signed Receipt
21 for Documents, unless the buyer is informed of the 15-day
22 voidability period and agrees to close before the expiration
23 of the 15 days. The developer shall retain in its records, for
24 5 years after the closing date, proof of buyer's agreement to
25 close before the expiration of the voidability period.The
26 documents to be delivered to the prospective buyer are the
27 prospectus or disclosure statement with all exhibits, if the
28 development is subject to the provisions of s. 718.504, or, if
29 not, then copies of the following which are applicable:

30 1. The question and answer sheet described in s.
31 718.504, and declaration of condominium, or the proposed

1 declaration if the declaration has not been recorded, which
2 shall include the certificate of a surveyor approximately
3 representing the locations required by s. 718.104.
4 2. The documents creating the association.
5 3. The bylaws.
6 4. The ground lease or other underlying lease of the
7 condominium.
8 5. The management contract, maintenance contract, and
9 other contracts for management of the association and
10 operation of the condominium and facilities used by the unit
11 owners having a service term in excess of 1 year, and any
12 management contracts that are renewable.
13 6. The estimated operating budget for the condominium
14 and a schedule of expenses for each type of unit, including
15 fees assessed pursuant to s. 718.113(1) for the maintenance of
16 limited common elements where such costs are shared only by
17 those entitled to use the limited common elements.
18 7. The lease of recreational and other facilities that
19 will be used only by unit owners of the subject condominium.
20 8. The lease of recreational and other common
21 facilities that will be used by unit owners in common with
22 unit owners of other condominiums.
23 9. The form of unit lease if the offer is of a
24 leasehold.
25 10. Any declaration of servitude of properties serving
26 the condominium but not owned by unit owners or leased to them
27 or the association.
28 11. If the development is to be built in phases or if
29 the association is to manage more than one condominium, a
30 description of the plan of phase development or the
31

1 arrangements for the association to manage two or more
2 condominiums.

3 12. If the condominium is a conversion of existing
4 improvements, the statements and disclosure required by s.
5 718.616.

6 13. The form of agreement for sale or lease of units.

7 14. A copy of the floor plan of the unit and the plot
8 plan showing the location of the residential buildings and the
9 recreation and other common areas.

10 15. A copy of all covenants and restrictions which
11 will affect the use of the property and which are not
12 contained in the foregoing.

13 16. If the developer is required by state or local
14 authorities to obtain acceptance or approval of any dock or
15 marina facilities intended to serve the condominium, a copy of
16 any such acceptance or approval acquired by the time of filing
17 with the division under s. 718.502(1), or a statement that
18 such acceptance or approval has not been acquired or received.

19 17. Evidence demonstrating that the developer has an
20 ownership, leasehold, or contractual interest in the land upon
21 which the condominium is to be developed.

22 Section 8. Section 718.621, Florida Statutes, is
23 created to read:

24 718.621 Rulemaking authority.--The division is
25 authorized to adopt rules as necessary to administer and
26 ensure compliance with developers' obligations with respect to
27 condominium conversions concerning the filing and noticing of
28 intended conversion, rental agreement extensions, rights of
29 first refusal, and disclosure and post-purchase protections.

30 Section 9. This act shall take effect upon becoming a
31 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 1054

Provides that the board of directors of condominium associations must notify the Division of Florida Land Sales, Condominiums, and Mobile Homes prior to taking any action to terminate or merge the condominium or the association. Provides that after recording a termination notice, the association shall provide the division with a copy of the recorded notice within 30 days.

Authorizes the division to adopt rules tailored to administer the provisions of s. 718.301, F.S.

Provides that the developer, upon recording the declaration of condominium or amendments adding phases to a condominium, shall file with the division such recording information on a specific form, within 30 days.

Provides specific authority for the division to adopt rules regarding filing, review, and examination requirements and relevant timetables to ensure compliance with notice and disclosure requirements in s. 718.502, F.S.