

By the Committee on Regulated Industries and Senator Dudley

315-1782C-98

1 A bill to be entitled
2 An act relating to condominiums and
3 cooperatives; amending s. 718.103, F.S.;
4 defining the terms "buyer" and "division";
5 amending s. 718.111, F.S.; providing for the
6 operation of certain condominiums created prior
7 to 1977 as single associations; permitting
8 consolidated financial operation; requiring a
9 developer-controlled association to exercise
10 due diligence to obtain and maintain insurance;
11 providing that failure to obtain and maintain
12 adequate insurance shall constitute a breach of
13 fiduciary responsibility by the
14 developer-appointed members of the board of
15 directors; providing that records may be
16 obtained in person or by mail; providing
17 specified associations must, upon written
18 request, copy and deliver requested records and
19 charge its actual costs; amending s. 718.112,
20 F.S.; providing requirements for eligibility to
21 be a candidate for the board; amending s.
22 718.116, F.S.; providing for unit owners and
23 the developer to be assessed in accordance with
24 their ownership interest in losses resulting
25 from a natural disaster or an act of God;
26 amending s. 719.103, F.S.; defining the terms
27 "buyer" and "division"; amending s. 719.1035,
28 F.S.; requiring filing of information; amending
29 s. 719.104, F.S.; requiring notification;
30 amending s. 719.106, F.S.; providing
31 requirements relating to association meetings;

1 amending s. 719.301, F.S.; providing rulemaking
2 authority; amending s. 719.403, F.S.; requiring
3 filing of information; amending s. 719.502,
4 F.S.; providing conditions precedent to closing
5 on a contract for sale or specified contracts
6 for lease; providing rulemaking authority;
7 amending s. 719.503, F.S.; providing conditions
8 for closing within the 15-day voidability
9 period; creating s. 719.621, F.S.; providing
10 rulemaking authority; amending s. 721.05, F.S.;
11 conforming a cross-reference; providing an
12 effective date.

13

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

15

16 Section 1. Section 718.103, Florida Statutes, is
17 amended to read:

18 718.103 Definitions.--As used in this chapter, the
19 term:

20 (1) "Assessment" means a share of the funds which are
21 required for the payment of common expenses, which from time
22 to time is assessed against the unit owner.

23 (2) "Association" means, in addition to those entities
24 responsible for the operation of common elements owned in
25 undivided shares by unit owners, any entity which operates or
26 maintains other real property in which condominium unit owners
27 have use rights, where unit owner membership in the entity is
28 composed exclusively of condominium unit owners or their
29 elected or appointed representatives, and where membership in
30 the entity is a required condition of unit ownership.

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1 (3) "Association property" means that property, real
2 and personal, which is owned or leased by, or is dedicated by
3 a recorded plat to, the association for the use and benefit of
4 its members.

5 (4) "Board of administration" means the board of
6 directors or other representative body which is responsible
7 for administration of the association.

8 (5) "Buyer" means a person who purchases a
9 condominium. The term "purchaser" may be used interchangeably
10 with the term "buyer."

11 ~~(6)(5)~~ "Bylaws" means the bylaws of the association as
12 they exist from time to time.

13 ~~(7)(6)~~ "Committee" means a group of board members,
14 unit owners, or board members and unit owners appointed by the
15 board or a member of the board to make recommendations to the
16 board regarding the association budget or take action on
17 behalf of the board.

18 ~~(8)(7)~~ "Common elements" means the portions of the
19 condominium property which are not included in the units.

20 ~~(9)(8)~~ "Common expenses" means all expenses and
21 assessments which are properly incurred by the association for
22 the condominium.

23 ~~(10)(9)~~ "Common surplus" means the excess of all
24 receipts of the association collected on behalf of a
25 condominium (including, but not limited to, assessments,
26 rents, profits, and revenues on account of the common
27 elements) over the common expenses.

28 ~~(11)(10)~~ "Condominium" means that form of ownership of
29 real property which is created pursuant to the provisions of
30 this chapter, which is comprised of units that may be owned by
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1 one or more persons, and in which there is, appurtenant to
2 each unit, an undivided share in common elements.

3 (12)~~(11)~~ "Condominium parcel" means a unit, together
4 with the undivided share in the common elements which is
5 appurtenant to the unit.

6 (13)~~(12)~~ "Condominium property" means the lands,
7 leaseholds, and personal property that are subjected to
8 condominium ownership, whether or not contiguous, and all
9 improvements thereon and all easements and rights appurtenant
10 thereto intended for use in connection with the condominium.

11 (14)~~(13)~~ "Conspicuous type" means type in capital
12 letters no smaller than the largest type, exclusive of
13 headings, on the page on which it appears and, in all cases,
14 at least 10-point type. Where conspicuous type is required,
15 it must be separated on all sides from other type and print.
16 Conspicuous type may be used in contracts for purchase or
17 public offering statements only where required by law.

18 (15)~~(14)~~ "Declaration" or "declaration of condominium"
19 means the instrument or instruments by which a condominium is
20 created, as they are from time to time amended.

21 (16)~~(15)~~ "Developer" means a person who creates a
22 condominium or offers condominium parcels for sale or lease in
23 the ordinary course of business, but does not include an owner
24 or lessee of a condominium or cooperative unit who has
25 acquired the unit for his or her own occupancy, nor does it
26 include a cooperative association which creates a condominium
27 by conversion of an existing residential cooperative after
28 control of the association has been transferred to the unit
29 owners if, following the conversion, the unit owners will be
30 the same persons who were unit owners of the cooperative and
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1 no units are offered for sale or lease to the public as part
2 of the plan of conversion.

3 (17) "Division" means the Division of Florida Land
4 Sales, Condominiums, and Mobile Homes of the Department of
5 Business and Professional Regulation.

6 (18)~~(16)~~ "Land" means, unless otherwise defined in the
7 declaration as hereinafter provided, the surface of a legally
8 described parcel of real property and includes, unless
9 otherwise specified in the declaration and whether separate
10 from or including such surface, airspace lying above and
11 subterranean space lying below such surface. However, if so
12 defined in the declaration, the term "land" may mean all or
13 any portion of the airspace or subterranean space between two
14 legally identifiable elevations and may exclude the surface of
15 a parcel of real property and may mean any combination of the
16 foregoing, whether or not contiguous.

17 (19)~~(17)~~ "Limited common elements" means those common
18 elements which are reserved for the use of a certain
19 condominium unit or units to the exclusion of other units, as
20 specified in the declaration of condominium.

21 (20)~~(18)~~ "Operation" or "operation of the condominium"
22 includes the administration and management of the condominium
23 property.

24 (21)~~(19)~~ "Rental agreement" means any written
25 agreement, or oral agreement if for less duration than 1 year,
26 providing for use and occupancy of premises.

27 (22)~~(20)~~ "Residential condominium" means a condominium
28 consisting of condominium units, any of which are intended for
29 use as a private temporary or permanent residence, except that
30 a condominium is not a residential condominium if the use for
31 which the units are intended is primarily commercial or

1 industrial and not more than three units are intended to be
2 used for private residence, and are intended to be used as
3 housing for maintenance, managerial, janitorial, or other
4 operational staff of the condominium. With respect to a
5 condominium that is not a timeshare condominium, a residential
6 unit includes a unit intended as a private temporary or
7 permanent residence as well as a unit not intended for
8 commercial or industrial use. With respect to a timeshare
9 condominium, the timeshare instrument as defined in s.
10 721.05(28) shall govern the intended use of each unit in the
11 condominium. If a condominium is a residential condominium but
12 contains units intended to be used for commercial or
13 industrial purposes, then, with respect to those units which
14 are not intended for or used as private residences, the
15 condominium is not a residential condominium. A condominium
16 which contains both commercial and residential units is a
17 mixed-use condominium subject to the requirements of s.
18 718.404.

19 (23)~~(21)~~ "Special assessment" means any assessment
20 levied against unit owners other than the assessment required
21 by a budget adopted annually.

22 (24)~~(22)~~ "Timeshare estate" means any interest in a
23 unit under which the exclusive right of use, possession, or
24 occupancy of the unit circulates among the various purchasers
25 of a timeshare plan pursuant to chapter 721 on a recurring
26 basis for a period of time.

27 (25)~~(23)~~ "Timeshare unit" means a unit in which
28 timeshare estates have been created.

29 (26)~~(24)~~ "Unit" means a part of the condominium
30 property which is subject to exclusive ownership. A unit may
31

1 be in improvements, land, or land and improvements together,
2 as specified in the declaration.

3 (27)~~(25)~~ "Unit owner" or "owner of a unit" means a
4 record owner of legal title to a condominium parcel.

5 (28)~~(26)~~ "Voting certificate" means a document which
6 designates one of the record title owners, or the corporate,
7 partnership, or entity representative, who is authorized to
8 vote on behalf of a condominium unit that is owned by more
9 than one owner or by any entity.

10 (29)~~(27)~~ "Voting interest" means the voting rights
11 distributed to the association members pursuant to s.
12 718.104(4)(i).

13 Section 2. Subsection (6), paragraph (a) of subsection
14 (11), and paragraph (c) of subsection (12) of section 718.111,
15 Florida Statutes, are amended to read:

16 718.111 The association.--

17 (6) OPERATION OF ~~PHASE~~ CONDOMINIUMS CREATED PRIOR TO
18 1977.--Notwithstanding any provision of this chapter, an
19 association may operate two or more residential condominiums
20 in which the initial condominium declaration was recorded
21 prior to January 1, 1977, ~~a phase project initially created~~
22 ~~pursuant to former s. 711.64~~ and may continue to so operate
23 such condominiums ~~project~~ as ~~though it were~~ a single
24 condominium for purposes of financial matters, including
25 budgets, assessments, accounting, recordkeeping, and similar
26 matters, if provision is made for such consolidated operation
27 in the applicable declarations of each such condominium ~~as~~
28 ~~initially recorded~~ or in the bylaws ~~as initially adopted~~. An
29 association for such condominiums may also provide for
30 consolidated financial operation as described in this section
31 either by amending its declaration pursuant to s.

1 718.110(1)(a) or by amending its bylaws and having the
2 amendment approved by not less than two-thirds of the total
3 voting interests.Notwithstanding any provision in this
4 chapter, common expenses for residential condominiums in such
5 a project being operated by a single association may be
6 assessed against all unit owners in such project pursuant to
7 the proportions or percentages established therefor in the
8 declarations as initially recorded or in the bylaws as
9 initially adopted, subject, however, to the limitations of ss.
10 718.116 and 718.302.

11 (11) INSURANCE.--

12 (a) A unit-owner controlled ~~The~~ association shall use
13 its best efforts to obtain and maintain adequate insurance to
14 protect the association, the association property, the common
15 elements, and the condominium property required to be insured
16 by the association pursuant to paragraph (b). If the
17 association is developer-controlled, the association shall
18 exercise due diligence to obtain and maintain such insurance.
19 Failure to obtain and maintain adequate insurance during any
20 period of developer control shall constitute a breach of
21 fiduciary responsibility by the developer appointed members of
22 the board of directors of the association, unless said members
23 can show that despite such failure, they have exercised due
24 diligence. An ~~The~~ association may also obtain and maintain
25 liability insurance for directors and officers, insurance for
26 the benefit of association employees, and flood insurance for
27 common elements, association property, and units. An
28 association or group of associations may self-insure against
29 claims against the association, the association property, and
30 the condominium property required to be insured by an
31 association, upon compliance with ss. 624.460-624.488. A copy

1 of each policy of insurance in effect shall be made available
2 for inspection by unit owners at reasonable times.

3 (12) OFFICIAL RECORDS.--

4 (c) The official records of the association are open
5 to inspection by any association member or the authorized
6 representative of such member at all reasonable times. The
7 right to inspect the records includes the right to make or
8 obtain copies, either in person or by mail, at the reasonable
9 expense, if any, of the association member. The association
10 may adopt reasonable rules regarding the frequency, time,
11 location, notice, and manner of record inspections, and
12 copying and delivery. However, an association consisting of
13 more than 50 units must, upon written request, copy and
14 deliver the requested official record copies and may charge
15 its actual costs to comply with the request. For purposes of
16 this section, a postmark, when applicable, establishes the
17 date of delivery. The failure of an association to provide
18 the records within 10 working days after receipt of a written
19 request shall create a rebuttable presumption that the
20 association willfully failed to comply with this paragraph. A
21 unit owner who is denied access to official records is
22 entitled to the actual damages or minimum damages for the
23 association's willful failure to comply with this paragraph.
24 The minimum damages shall be \$50 per calendar day up to 10
25 days, the calculation to begin on the 11th working day after
26 receipt of the written request. The failure to permit
27 inspection of the association records as provided herein
28 entitles any person prevailing in an enforcement action to
29 recover reasonable attorney's fees from the person in control
30 of the records who, directly or indirectly, knowingly denied
31 access to the records for inspection. The association shall

1 maintain an adequate number of copies of the declaration,
2 articles of incorporation, bylaws, and rules, and all
3 amendments to each of the foregoing, as well as the question
4 and answer sheet provided for in s. 718.504 on the condominium
5 property to ensure their availability to unit owners and
6 prospective purchasers, and may charge its actual costs of of
7 mailing for preparing and furnishing these documents to those
8 requesting the same. Notwithstanding the provisions of this
9 paragraph, the following records shall not be accessible to
10 unit owners:

11 1. A record which was prepared by an association
12 attorney or prepared at the attorney's express direction,
13 which reflects a mental impression, conclusion, litigation
14 strategy, or legal theory of the attorney or the association,
15 and which was prepared exclusively for civil or criminal
16 litigation or for adversarial administrative proceedings, or
17 which was prepared in anticipation of imminent civil or
18 criminal litigation or imminent adversarial administrative
19 proceedings until the conclusion of the litigation or
20 adversarial administrative proceedings.

21 2. Information obtained by an association in
22 connection with the approval of the lease, sale, or other
23 transfer of a unit.

24 3. Medical records of unit owners.

25 Section 3. Paragraph (d) of subsection (2) of section
26 718.112, Florida Statutes, is amended to read:

27 718.112 Bylaws.--

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

31 (d) Unit owner meetings.--

1 1. There shall be an annual meeting of the unit
2 owners. Unless the bylaws provide otherwise, a vacancy on the
3 board of administration caused by the expiration of a
4 director's term shall be filled by electing a new board
5 member, and the election shall be by closed ballot; however,
6 if there is only one candidate for election to fill the
7 vacancy, no election is required. If there is no provision in
8 the bylaws for terms of the members of the board of
9 administration, the terms of all members of the board of
10 administration shall expire upon the election of their
11 successors at the annual meeting. Any unit owner desiring to
12 be a candidate for board membership shall comply with
13 subparagraph 3. In order to be eligible for board membership a
14 person must meet the requirements set forth in the
15 declaration. A person who has been convicted of any felony by
16 any court of record and who has not had his or her right to
17 vote restored pursuant to law in the jurisdiction of his or
18 her residence is not eligible for board membership.

19 2. The bylaws shall provide the method of calling
20 meetings of unit owners, including annual meetings. Written
21 notice, which notice must include an agenda, shall be mailed
22 or delivered to each unit owner at least 14 days prior to the
23 annual meeting and shall be posted in a conspicuous place on
24 the condominium property at least 14 continuous days preceding
25 the annual meeting. Upon notice to the unit owners, the board
26 shall by duly adopted rule designate a specific location on
27 the condominium property or association property upon which
28 all notices of unit owner meetings shall be posted; however,
29 if there is no condominium property or association property
30 upon which notices can be posted, this requirement does not
31 apply. Unless a unit owner waives in writing the right to

1 receive notice of the annual meeting by mail, the notice of
2 the annual meeting shall be sent by mail to each unit owner.
3 Where a unit is owned by more than one person, the association
4 shall provide notice, for meetings and all other purposes, to
5 that one address which the developer initially identifies for
6 that purpose and thereafter as one or more of the owners of
7 the unit shall so advise the association in writing, or if no
8 address is given or the owners of the unit do not agree, to
9 the address provided on the deed of record. An officer of the
10 association, or the manager or other person providing notice
11 of the association meeting, shall provide an affidavit or
12 United States Postal Service certificate of mailing, to be
13 included in the official records of the association affirming
14 that the notice was mailed or hand delivered, in accordance
15 with this provision, to each unit owner at the address last
16 furnished to the association.

17 3. After January 1, 1992, the members of the board of
18 administration shall be elected by written ballot or voting
19 machine. Proxies shall in no event be used in electing the
20 board of administration, either in general elections or
21 elections to fill vacancies caused by recall, resignation, or
22 otherwise, unless otherwise provided in this chapter. Not less
23 than 60 days before a scheduled election, the association
24 shall mail or deliver, whether by separate association mailing
25 or included in another association mailing or delivery
26 including regularly published newsletters, to each unit owner
27 entitled to a vote, a first notice of the date of the
28 election. Any eligible unit owner or other eligible person
29 desiring to be a candidate for the board of administration
30 must give written notice to the association not less than 40
31 days before a scheduled election. Together with the written

1 notice and agenda as set forth in subparagraph 2., the
2 association shall mail or deliver a second notice of the
3 election to all unit owners entitled to vote therein, together
4 with a ballot which shall list all candidates. Upon request of
5 a candidate, the association shall include an information
6 sheet, no larger than 8 1/2 inches by 11 inches, which must
7 be furnished by the candidate not less than 35 days before the
8 election, to be included with the mailing of the ballot, with
9 the costs of mailing or delivery and copying to be borne by
10 the association. However, the association has no liability for
11 the contents of the information sheets prepared by the
12 candidates. In order to reduce costs, the association may
13 print or duplicate the information sheets on both sides of the
14 paper. The division shall by rule establish voting procedures
15 consistent with the provisions contained herein, including
16 rules providing for the secrecy of ballots. Elections shall
17 be decided by a plurality of those ballots cast. There shall
18 be no quorum requirement; however, at least 20 percent of the
19 eligible voters must cast a ballot in order to have a valid
20 election of members of the board of administration. No unit
21 owner shall permit any other person to vote his or her ballot,
22 and any such ballots improperly cast shall be deemed invalid.
23 A unit owner who needs assistance in casting the ballot for
24 the reasons stated in s. 101.051 may obtain assistance in
25 casting the ballot. Any unit owner violating this provision
26 may be fined by the association in accordance with s. 718.303.
27 The regular election shall occur on the date of the annual
28 meeting. The provisions of this subparagraph shall not apply
29 to timeshare condominium associations. Notwithstanding the
30 provisions of this subparagraph, an election and balloting are
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1 not required unless more candidates file notices of intent to
2 run or are nominated than vacancies exist on the board.

3 4. Any approval by unit owners called for by this
4 chapter or the applicable declaration or bylaws, including,
5 but not limited to, the approval requirement in s. 718.111(8),
6 shall be made at a duly noticed meeting of unit owners and
7 shall be subject to all requirements of this chapter or the
8 applicable condominium documents relating to unit owner
9 decisionmaking, except that unit owners may take action by
10 written agreement, without meetings, on matters for which
11 action by written agreement without meetings is expressly
12 allowed by the applicable bylaws or declaration or any statute
13 which provides for such action.

14 5. Unit owners may waive notice of specific meetings
15 if allowed by the applicable bylaws or declaration or any
16 statute.

17 6. Unit owners shall have the right to participate in
18 meetings of unit owners with reference to all designated
19 agenda items. However, the association may adopt reasonable
20 rules governing the frequency, duration, and manner of unit
21 owner participation.

22 7. Any unit owner may tape record or videotape a
23 meeting of the unit owners subject to reasonable rules adopted
24 by the division.

25
26 Notwithstanding subparagraphs (b)2. and (d)3., an association
27 may, by the affirmative vote of a majority of the total voting
28 interests, provide for different voting and election
29 procedures in its bylaws, which vote may be by a proxy
30 specifically delineating the different voting and election
31 procedures. The different voting and election procedures may

1 provide for elections to be conducted by limited or general
2 proxy.

3 Section 4. Paragraph (a) of subsection (9) of section
4 718.116, Florida Statutes, is amended to read:

5 718.116 Assessments; liability; lien and priority;
6 interest; collection.--

7 (9)(a) No unit owner may be excused from the payment
8 of his or her share of the common expense of a condominium
9 unless all unit owners are likewise proportionately excused
10 from payment, except as provided in subsection (1) and in the
11 following cases:

12 1. If the declaration so provides, a developer or
13 other person who owns condominium units offered for sale may
14 be excused from the payment of the share of the common
15 expenses and assessments related to those units for a stated
16 period of time subsequent to the recording of the declaration
17 of condominium. The period must terminate no later than the
18 first day of the fourth calendar month following the month in
19 which the closing of the purchase and sale of the first
20 condominium unit occurs. However, the developer must pay
21 those ~~the portion of~~ common expenses incurred during that
22 period which exceed the amount assessed against other unit
23 owners. Notwithstanding this limitation, if a
24 developer-controlled association has maintained all insurance
25 coverages required by s. 718.111(11)(a), the common expenses
26 incurred during the foregoing period resulting from a natural
27 disaster or an act of God, which are not covered by insurance
28 proceeds from the insurance maintained by the association, may
29 be assigned against all unit owners owning units on the date
30 of such natural disaster or act of God, and their successors
31 and assigns, including the developer with respect to units

1 owned by the developer. In the event of such an assessment,
2 all units shall be assessed in accordance with their ownership
3 interest in the common elements as required by s. 718.115(2).

4 2. A developer or other person who owns condominium
5 units or who has an obligation to pay condominium expenses may
6 be excused from the payment of his or her share of the common
7 expense which would have been assessed against those units
8 during the period of time that he or she has guaranteed to
9 each purchaser in the purchase contract, declaration, or
10 prospectus, or by agreement between the developer and a
11 majority of the unit owners other than the developer, that the
12 assessment for common expenses of the condominium imposed upon
13 the unit owners would not increase over a stated dollar amount
14 and has obligated himself or herself to pay any amount of
15 common expenses incurred during that period and not produced
16 by the assessments at the guaranteed level receivable from
17 other unit owners. Notwithstanding this limitation, if a
18 developer-controlled association has maintained all insurance
19 coverages required by s. 718.111(11)(a), the common expenses
20 incurred during the guarantee period resulting from a natural
21 disaster or an act of God, which are not covered by insurance
22 proceeds from the insurance maintained by the association, may
23 be assessed against all unit owners owning units on the date
24 of such natural disaster or act of God, and their successors
25 and assigns, including the developer with respect to units
26 owned by the developer. In the event of such an assessment,
27 all units shall be assessed in accordance with their ownership
28 interest in the common elements as required by s. 718.115(2).

29 The guarantee may provide that after an initial stated period,
30 the developer has an option or options to extend the guarantee
31 for one or more additional stated periods.

1 Section 5. Section 719.103, Florida Statutes, is
2 amended to read:

3 719.103 Definitions.--As used in this chapter:

4 (1) "Assessment" means a share of the funds required
5 for the payment of common expenses, which from time to time is
6 assessed against the unit owner.

7 (2) "Association" means the corporation for profit or
8 not for profit that owns the record interest in the
9 cooperative property or a leasehold of the property of a
10 cooperative and that is responsible for the operation of the
11 cooperative.

12 (3) "Board of administration" means the board of
13 directors or other representative body responsible for
14 administration of the association.

15 (4) "Buyer" means a person who purchases a
16 cooperative. The term "purchaser" may be used interchangeably
17 with the term "buyer."

18 (5)~~(4)~~ "Bylaws" means the bylaws of the association
19 existing from time to time.

20 (6)~~(5)~~ "Committee" means a group of board members,
21 unit owners, or board members and unit owners appointed by the
22 board or a member of the board to make recommendations to the
23 board regarding the association budget or take action on
24 behalf of the board.

25 (7)~~(6)~~ "Common areas" means the portions of the
26 cooperative property not included in the units.

27 (8) "Common areas" includes within its meaning the
28 following:

29 (a) The cooperative property which is not included
30 within the units.

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1 (b) Easements through units for conduits, ducts,
2 plumbing, wiring, and other facilities for the furnishing of
3 utility services to units and the common areas.

4 (c) An easement of support in every portion of a unit
5 which contributes to the support of a building.

6 (d) The property and installations required for the
7 furnishing of utilities and other services to more than one
8 unit or to the common areas.

9 (e) Any other part of the cooperative property
10 designated in the cooperative documents as common areas.

11 ~~(9)~~~~(7)~~ "Common expenses" means all expenses and
12 assessments properly incurred by the association for the
13 cooperative.

14 ~~(10)~~~~(8)~~ "Common surplus" means the excess of all
15 receipts of the association--including, but not limited to,
16 assessments, rents, profits, and revenues on account of the
17 common areas--over the amount of common expenses.

18 (11) "Conspicuous type" means type in capital letters
19 no smaller than the largest type on the page on which it
20 appears.

21 ~~(12)~~~~(9)~~ "Cooperative" means that form of ownership of
22 real property wherein legal title is vested in a corporation
23 or other entity and the beneficial use is evidenced by an
24 ownership interest in the association and a lease or other
25 muniment of title or possession granted by the association as
26 the owner of all the cooperative property.

27 ~~(13)~~~~(10)~~ "Cooperative documents" means:

28 (a) The documents that create a cooperative,
29 including, but not limited to, articles of incorporation of
30 the association, bylaws, and the ground lease or other
31 underlying lease, if any.

1 (b) The document evidencing a unit owner's membership
2 or share in the association.

3 (c) The document recognizing a unit owner's title or
4 right of possession to his or her unit.

5 ~~(14)(11)~~ "Cooperative parcel" means the shares or
6 other evidence of ownership in a cooperative representing an
7 undivided share in the assets of the association, together
8 with the lease or other muniment of title or possession.

9 ~~(15)(12)~~ "Cooperative property" means the lands,
10 leaseholds, and personal property owned by a cooperative
11 association.

12 ~~(16)(13)~~ "Developer" means a person who creates a
13 cooperative or who offers cooperative parcels for sale or
14 lease in the ordinary course of business, but does not include
15 the owner or lessee of a unit who has acquired or leased the
16 unit for his or her own occupancy, nor does it include a
17 condominium association which creates a cooperative by
18 conversion of an existing residential condominium after
19 control of the association has been transferred to the unit
20 owners if, following the conversion, the unit owners will be
21 the same persons.

22 (17) "Division" means the Division of Florida Land
23 Sales, Condominiums and Mobile Homes of the Department of
24 Business and Professional Regulation.

25 (18) "Limited common areas" means those common areas
26 which are reserved for the use of a certain cooperative unit
27 or units to the exclusion of other units, as specified in the
28 cooperative documents.

29 ~~(19)(14)~~ "Operation" or "operation of the cooperative"
30 includes the administration and management of the cooperative
31 property.

1 (20) "Rental agreement" means any written agreement,
2 or oral agreement if for less duration than 1 year, providing
3 for use and occupancy of premises.

4 (21) "Residential cooperative" means a cooperative
5 consisting of cooperative units, any of which are intended for
6 use as a private residence. A cooperative is not a residential
7 cooperative if the use of the units is intended as primarily
8 commercial or industrial and not more than three units are
9 intended to be used for private residence, domicile, or
10 homestead, or if the units are intended to be used as housing
11 for maintenance, managerial, janitorial, or other operational
12 staff of the cooperative. If a cooperative is a residential
13 cooperative under this definition, but has units intended to
14 be commercial or industrial, then the cooperative is a
15 residential cooperative with respect to those units intended
16 for use as a private residence, domicile, or homestead, but
17 not a residential cooperative with respect to those units
18 intended for use commercially or industrially.

19 (22)~~(15)~~ "Unit" means a part of the cooperative
20 property which is subject to exclusive use and possession. A
21 unit may be improvements, land, or land and improvements
22 together, as specified in the cooperative documents.

23 (23)~~(16)~~ "Unit owner" or "owner of a unit" means the
24 person holding a share in the cooperative association and a
25 lease or other muniment of title or possession of a unit that
26 is granted by the association as the owner of the cooperative
27 property.

28 ~~(17) "Residential cooperative" means a cooperative~~
29 ~~consisting of cooperative units, any of which are intended for~~
30 ~~use as a private residence. A cooperative is not a~~
31 ~~residential cooperative if the use of the units is intended as~~

1 ~~primarily commercial or industrial and not more than three~~
2 ~~units are intended to be used for private residence, domicile,~~
3 ~~or homestead, or if the units are intended to be used as~~
4 ~~housing for maintenance, managerial, janitorial, or other~~
5 ~~operational staff of the cooperative. If a cooperative is a~~
6 ~~residential cooperative under this definition, but has units~~
7 ~~intended to be commercial or industrial, then the cooperative~~
8 ~~is a residential cooperative with respect to those units~~
9 ~~intended for use as a private residence, domicile, or~~
10 ~~homestead, but not a residential cooperative with respect to~~
11 ~~those units intended for use commercially or industrially.~~

12 ~~(18) "Rental agreement" means any written agreement,~~
13 ~~or oral agreement if for less duration than 1 year, providing~~
14 ~~for use and occupancy of premises.~~

15 ~~(19) "Conspicuous type" means type in capital letters~~
16 ~~no smaller than the largest type on the page on which it~~
17 ~~appears.~~

18 ~~(20) "Limited common areas" means those common areas~~
19 ~~which are reserved for the use of a certain cooperative unit~~
20 ~~or units to the exclusion of other units, as specified in the~~
21 ~~cooperative documents.~~

22 ~~(21) "Common areas" includes within its meaning the~~
23 ~~following:~~

24 ~~(a) The cooperative property which is not included~~
25 ~~within the units.~~

26 ~~(b) Easements through units for conduits, ducts,~~
27 ~~plumbing, wiring, and other facilities for the furnishing of~~
28 ~~utility services to units and the common areas.~~

29 ~~(c) An easement of support in every portion of a unit~~
30 ~~which contributes to the support of a building.~~

31

1 ~~(d) The property and installations required for the~~
2 ~~furnishing of utilities and other services to more than one~~
3 ~~unit or to the common areas.~~

4 ~~(e) Any other part of the cooperative property~~
5 ~~designated in the cooperative documents as common areas.~~

6 Section 6. Section 719.1035, Florida Statutes, is
7 amended to read:

8 719.1035 Creation of cooperatives.--The date when
9 cooperative existence shall commence is upon commencement of
10 corporate existence of the cooperative association as provided
11 in s. 607.0203. The cooperative documents must be recorded in
12 the county in which the cooperative is located before property
13 may be conveyed or transferred to the cooperative. All
14 persons who have any record interest in any mortgage
15 encumbering the interest in the land being submitted to
16 cooperative ownership must either join in the execution of the
17 cooperative documents or execute, with the requirements for
18 deed, and record, a consent to the cooperative documents or an
19 agreement subordinating their mortgage interest to the
20 cooperative documents. Upon creation of a cooperative, the
21 developer or association shall file the recording information
22 with the division within 30 working days on a form prescribed
23 by the division.

24 Section 7. Subsection (10) is added to section
25 719.104, Florida Statutes, to read:

26 719.104 Cooperatives; access to units; records;
27 financial reports; assessments; purchase of leases.--

28 (10) NOTIFICATION OF DIVISION.--When the board of
29 directors intends to dissolve or merge the cooperative
30 association, the board shall so notify the division before
31

1 taking any action to dissolve or merge the cooperative
2 association.

3 Section 8. Paragraphs (b) and (c) of subsection (1) of
4 section 719.106, Florida Statutes, are amended to read:

5 719.106 Bylaws; cooperative ownership.--

6 (1) MANDATORY PROVISIONS.--The bylaws or other
7 cooperative documents shall provide for the following, and if
8 they do not, they shall be deemed to include the following:

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

10 1. Unless otherwise provided in the bylaws, the
11 percentage of voting interests required to constitute a quorum
12 at a meeting of the members shall be a majority of voting
13 interests, and decisions shall be made by owners of a majority
14 of the voting interests. Unless otherwise provided in this
15 chapter, or in the articles of incorporation, bylaws, or other
16 cooperative documents, and except as provided in subparagraph
17 (d)1., decisions shall be made by owners of a majority of the
18 voting interests represented at a meeting at which a quorum is
19 present.

20 2. Except as specifically otherwise provided herein,
21 after January 1, 1992, unit owners may not vote by general
22 proxy, but may vote by limited proxies substantially
23 conforming to a limited proxy form adopted by the division.
24 Limited proxies and general proxies may be used to establish a
25 quorum. Limited proxies shall be used for votes taken to
26 waive or reduce reserves in accordance with subparagraph
27 (j)2., for votes taken to amend the articles of incorporation
28 or bylaws pursuant to this section, and for any other matter
29 for which this chapter requires or permits a vote of the unit
30 owners. Except as provided in paragraph (d), after January 1,
31 1992, no proxy, limited or general, shall be used in the

1 election of board members. General proxies may be used for
2 other matters for which limited proxies are not required, and
3 may also be used in voting for nonsubstantive changes to items
4 for which a limited proxy is required and given.
5 Notwithstanding the provisions of this section, unit owners
6 may vote in person at unit owner meetings. Nothing contained
7 herein shall limit the use of general proxies or require the
8 use of limited proxies or require the use of limited proxies
9 for any agenda item or election at any meeting of a timeshare
10 cooperative.

11 3. Any proxy given shall be effective only for the
12 specific meeting for which originally given and any lawfully
13 adjourned meetings thereof. In no event shall any proxy be
14 valid for a period longer than 90 days after the date of the
15 first meeting for which it was given. Every proxy shall be
16 revocable at any time at the pleasure of the unit owner
17 executing it.

18 4. A member of the board of administration or a
19 committee may submit in writing his or her agreement or
20 disagreement with any action taken at a meeting that the
21 member did not attend. This agreement or disagreement may not
22 be used as a vote for or against the action taken and may not
23 be used for the purposes of creating a quorum.

24 5. When some or all of the board or committee members
25 meet by telephone conference, those board or committee members
26 attending by telephone conference may be counted toward
27 obtaining a quorum and may vote by telephone. A telephone
28 speaker shall be utilized so that the conversation of those
29 board or committee members attending by telephone may be heard
30 by the board or committee members attending in person, as well
31 as by unit owners present at a meeting.

1 (c) Board of administration meetings.--Meetings of the
2 board of administration at which a quorum of the members is
3 present shall be open to all unit owners. Any unit owner may
4 tape record or videotape meetings of the board of
5 administration. The right to attend such meetings includes
6 the right to speak at such meetings with reference to all
7 designated agenda items. The division shall adopt reasonable
8 rules governing the tape recording and videotaping of the
9 meeting. The association may adopt reasonable written rules
10 governing the frequency, duration, and manner of unit owner
11 statements. Adequate notice of all meetings shall be posted in
12 a conspicuous place upon the cooperative property at least 48
13 continuous hours preceding the meeting, except in an
14 emergency. Any item not included on the notice may be taken
15 up on an emergency basis by at least a majority plus one of
16 the members of the board. Such emergency action shall be
17 noticed and ratified at the next regular meeting of the board.
18 However, written notice of any meeting at which nonemergency
19 special assessments, or at which amendment to rules regarding
20 unit use, will be considered shall be mailed or delivered to
21 the unit owners and posted conspicuously on the cooperative
22 property not less than 14 days prior to the meeting. Evidence
23 of compliance with this 14-day notice shall be made by an
24 affidavit executed by the person providing the notice and
25 filed among the official records of the association. Upon
26 notice to the unit owners, the board shall by duly adopted
27 rule designate a specific location on the cooperative property
28 upon which all notices of board meetings shall be posted.
29 Notice of any meeting in which regular assessments against
30 unit owners are to be considered for any reason shall
31 specifically contain a statement that assessments will be

1 considered and the nature of any such assessments. Meetings of
2 a committee to take final action on behalf of the board or to
3 make recommendations to the board regarding the association
4 budget are subject to the provisions of this paragraph.
5 Meetings of a committee that does not take final action on
6 behalf of the board or make recommendations to the board
7 regarding the association budget are subject to the provisions
8 of this section, unless those meetings are exempted from this
9 section by the bylaws of the association. Notwithstanding any
10 other law to the contrary, the requirement that board meetings
11 and committee meetings be open to the unit owners is
12 inapplicable to meetings between the board or a committee and
13 the association's attorney, with respect to proposed or
14 pending litigation, when the meeting is held for the purpose
15 of seeking or rendering legal advice.

16 Section 9. Subsection (6) is added to section 719.301,
17 Florida Statutes, to read:

18 719.301 Transfer of association control.--

19 (6) The division may adopt rules administering the
20 provisions of this section.

21 Section 10. Subsection (7) is added to section
22 719.403, Florida Statutes, to read:

23 719.403 Phase cooperatives.--

24 (7) Upon recording the cooperative documents or
25 amendments adding phases pursuant to this section, the
26 developer or association shall file the recording information
27 with the division within 30 working days on a form prescribed
28 by the division.

29 Section 11. Subsection (1) of section 719.502, Florida
30 Statutes, is amended to read:

31 719.502 Filing prior to sale or lease.--

1 (1)(a) A developer of a residential cooperative shall
2 file with the division one copy of each of the documents and
3 items required to be furnished to a buyer or lessee by ss.
4 719.503 and 719.504, if applicable. Until the developer has
5 so filed, a contract for sale or lease of a unit for more than
6 5 years shall be voidable by the purchaser or lessee prior to
7 the closing of his or her purchase or lease of a unit. A
8 developer shall not close on any contract for sale or contract
9 for a lease period of more than 5 years until the developer
10 prepares and files with the division documents complying with
11 the requirements of this chapter and the rules promulgated by
12 the division and until the division notifies the developer
13 that the filing is proper. A developer shall not close on any
14 contract for sale or contract for a lease period of more than
15 5 years, as further provided in s. 719.503(1)(b), until the
16 developer prepares and delivers all documents required by s.
17 719.503(1)(b) to the prospective buyer.

18 (b) The division may by rule develop filing, review,
19 and examination requirements and the relevant timetables
20 necessary to ensure compliance with the notice and disclosure
21 requirements of this section.

22 Section 12. Paragraph (b) of subsection (1) of section
23 719.503, Florida Statutes, is amended to read:

24 719.503 Disclosure prior to sale.--

25 (1) DEVELOPER DISCLOSURE.--

26 (b) Copies of documents to be furnished to prospective
27 buyer or lessee.--Until such time as the developer has
28 furnished the documents listed below to a person who has
29 entered into a contract to purchase a unit or lease it for
30 more than 5 years, the contract may be voided by that person,
31 entitling the person to a refund of any deposit together with

1 interest thereon as provided in s. 719.202. The contract may
2 be terminated by written notice from the proposed buyer or
3 lessee delivered to the developer within 15 days after the
4 buyer or lessee receives all of the documents required by this
5 section. The developer shall not close for 15 days following
6 the execution of the agreement and delivery of the documents
7 to the buyer as evidenced by a receipt for documents signed by
8 the buyer unless the buyer is informed in the 15-day
9 voidability period and agrees to close prior to the expiration
10 of the 15 days. The developer shall retain in his or her
11 records a separate signed agreement as proof of the buyer's
12 agreement to close prior to the expiration of said voidability
13 period. Said proof shall be retained for a period of 5 years
14 after the date of the closing transaction.The documents to be
15 delivered to the prospective buyer are the prospectus or
16 disclosure statement with all exhibits, if the development is
17 subject to the provisions of s. 719.504, or, if not, then
18 copies of the following which are applicable:

19 1. The question and answer sheet described in s.
20 719.504, and cooperative documents, or the proposed
21 cooperative documents if the documents have not been recorded,
22 which shall include the certificate of a surveyor
23 approximately representing the locations required by s.
24 719.104.

25 2. The documents creating the association.

26 3. The bylaws.

27 4. The ground lease or other underlying lease of the
28 cooperative.

29 5. The management contract, maintenance contract, and
30 other contracts for management of the association and
31 operation of the cooperative and facilities used by the unit

1 owners having a service term in excess of 1 year, and any
2 management contracts that are renewable.

3 6. The estimated operating budget for the cooperative
4 and a schedule of expenses for each type of unit, including
5 fees assessed to a shareholder who has exclusive use of
6 limited common areas, where such costs are shared only by
7 those entitled to use such limited common areas.

8 7. The lease of recreational and other facilities that
9 will be used only by unit owners of the subject cooperative.

10 8. The lease of recreational and other common areas
11 that will be used by unit owners in common with unit owners of
12 other cooperatives.

13 9. The form of unit lease if the offer is of a
14 leasehold.

15 10. Any declaration of servitude of properties serving
16 the cooperative but not owned by unit owners or leased to them
17 or the association.

18 11. If the development is to be built in phases or if
19 the association is to manage more than one cooperative, a
20 description of the plan of phase development or the
21 arrangements for the association to manage two or more
22 cooperatives.

23 12. If the cooperative is a conversion of existing
24 improvements, the statements and disclosure required by s.
25 719.616.

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

27 14. A copy of the floor plan of the unit and the plot
28 plan showing the location of the residential buildings and the
29 recreation and other common areas.

30
31

1 15. A copy of all covenants and restrictions which
2 will affect the use of the property and which are not
3 contained in the foregoing.

4 16. If the developer is required by state or local
5 authorities to obtain acceptance or approval of any dock or
6 marina facilities intended to serve the cooperative, a copy of
7 any such acceptance or approval acquired by the time of filing
8 with the division pursuant to s. 719.502(1) or a statement
9 that such acceptance or approval has not been acquired or
10 received.

11 17. Evidence demonstrating that the developer has an
12 ownership, leasehold, or contractual interest in the land upon
13 which the cooperative is to be developed.

14 Section 13. Section 719.621, Florida Statutes, is
15 created to read:

16 719.621 Rulemaking authority.--The division may adopt
17 rules to administer and ensure compliance with a developer's
18 obligations with respect to cooperative conversions concerning
19 the filing and noticing of intended conversions, rental
20 agreement extensions, rights of first refusal, and disclosures
21 and post-purchase protections.

22 Section 14. Subsection (28) of section 721.05, Florida
23 Statutes, is amended to read:

24 721.05 Definitions.--As used in this chapter, the
25 term:

26 (28) "Timeshare estate" means a right to occupy a
27 timeshare unit, coupled with a freehold estate or an estate
28 for years with a future interest in a timeshare property or a
29 specified portion thereof. The term shall also mean an
30 interest in a condominium unit pursuant to s. 718.103 ~~s.~~
31 ~~718.103(22)~~.

1 Section 15. This act shall take effect upon becoming a
2 law.

3
4 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
5 COMMITTEE SUBSTITUTE FOR
6 SB 1624

7 Provides a procedure for amending the declarations or bylaws
8 of condominiums recorded prior to January 1, 1977, to
9 consolidate financial operations of two or more residential
10 condominiums under a single association.

11 Requires an association with more than 50 units to deliver
12 copies of the official records upon written request and
13 provides for the association to recover its actual costs of
14 copying and delivering the documents. Defines the terms
15 "buyer" and "division" in the Condominium Act and the
16 Cooperative Act.

17 Provides that a person convicted of a felony is not eligible
18 for board membership in a condominium association unless that
19 person's right to vote is restored. Provides for procedures
20 and requirements related to cooperative committee meetings.
21 Requires a signed agreement by the buyer of a cooperative
22 waiving the buyer's right to void a sale within 15 days of the
23 purchase.

24 Provides that the board of directors of a cooperative
25 association must notify the division prior to taking any
26 action to dissolve or merge the association. Provides that
27 upon creation of a cooperative or upon recording the
28 cooperative documents or amendments adding phases to a
29 cooperative, the developer or the association shall, within 30
30 days, file with the division such recording information.

31 Authorizes the division to adopt rules to administer
provisions regarding transfer of cooperative association
control from the developer to the unit owners. Provides
specific authority for the division to adopt rules regarding
filing, review, and examination requirements and relevant
timetables relating to ensuring compliance with notice and
disclosure requirements. Authorizes the division to adopt
rules to administer and ensure compliance of the developers'
obligations with respect to cooperative conversions.