

Amendment No. 02 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

The Council for Smarter Government offered the following:

Substitute Amendment for Amendment (684891) (with title amendment)

Remove from the bill: Everything after the enacting clause and insert in lieu thereof:

Section 1. Subsections (8) and (9) are added to section 718.203, Florida Statutes, to read:

718.203 Warranties.--

(8) If the developer has obtained from the contractor a construction payment and performance bond in the amount of the contract with the contractor which was issued by a surety licensed to do business in this state and has assigned or otherwise made available the bond or the proceeds thereof to the association for a period equal to or greater than the warranty periods in s. 718.203, the developer has no liability, under the Condominium Act or otherwise at law or in equity, to the association or to the purchaser of each unit for any construction defects or deficiencies that are within the scope of the developer's contract with the contractor and

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1 all subcontractors and suppliers.

2 (9) If the developer has required the engineer to
3 maintain a professional malpractice policy that has minimum
4 aggregate policy limits no less than 60 percent of the value
5 of the developer's contract with the general contractor and
6 which was issued by an insurer licensed to do business in this
7 state and has assigned or otherwise made available the policy
8 or the proceeds thereof to the association for a period equal
9 to or greater than the warranty periods in s. 718.213, the
10 developer has no liability to the association or to the
11 purchaser of each unit, under the Condominium Act or otherwise
12 at law or in equity, for any defects in engineering design or
13 engineering services that are within the scope of the
14 developer's contract with the engineer.

15 Section 2. Section 718.3027, Florida Statutes, is
16 created to read:

17 718.3027 Prelitigation disclosure to and approval by
18 owners.--

19 (1) Before commencing any litigation against the
20 developer in the name of the association involving amounts in
21 controversy in excess of \$100,000, the association must
22 furnish to each owner other than the developer a separate
23 document entitled "Litigation Disclosure Notice". The
24 division shall, by rule, establish a standard format for a
25 Litigation Disclosure Notice.

26 (2) A Litigation Disclosure Notice must inform each
27 owner other than the developer of the basis for the
28 association's contemplated litigation or adversarial
29 proceeding; the professional qualifications of the person
30 making the allegations supporting the association's claim; the
31 response of the developer to the allegations and whether the

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1 developer has refused or offered to perform remedial work; the
2 efforts made to mediate or resolve the claim; the projected
3 attorney's fees, expert fees, and other costs to the
4 association of the proposed litigation; the association's
5 probability of success in the litigation; the association's
6 probability of collecting a judgment resulting from the
7 litigation; and the probability of association liability for
8 attorney's fees and costs associated with the litigation.

9 (3) Litigation based upon the matter described in the
10 Litigation Disclosure Notice may not be commenced unless
11 approved in advance by a majority of the owners other than the
12 developer, or by such greater number of the owners other than
13 the developer as is required by the declaration of the
14 condominium operated by the association. At any meeting of
15 unit owners regarding the proposed litigation, the developer
16 may be excluded from the meeting, and the developer-owned
17 units shall not count against the quorum requirement. At any
18 meeting of the board of administration, a director nominated
19 or appointed by the developer may be excluded from the
20 meeting, and the seat shall not count against the quorum
21 requirement.

22 (4) The Litigation Disclosure Notice must carry the
23 following legend, in conspicuous type on the top of the first
24 page: THIS DOCUMENT HAS BEEN PREPARED BY THE ASSOCIATION AND
25 ITS ATTORNEYS IN ANTICIPATION OF LITIGATION, AND IS A
26 PROTECTED LAWYER-CLIENT COMMUNICATION.

27 (5) A Litigation Disclosure Notice is confidential,
28 exempt from discovery by a developer, and shall not be
29 admissible in any trial or hearing. No unit owner may waive
30 the confidentiality of a Litigation Disclosure Notice, only
31 the board of administration of the association may authorize a

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1 waiver of confidentiality of a Litigation Disclosure Notice.

2 Section 3. Present subsection (6) of section 718.301,
3 Florida Statutes, is redesignated as subsection (7) of that
4 section and new subsection (6) is added to that section to
5 read:

6 718.301 Transfer of association control.--

7 (6) Actions taken by members of the board of
8 administration designated by the developer are considered
9 actions taken by the developer and the developer is
10 responsible to the association and its members for all such
11 actions.

12 Section 4. Paragraph (a) of subsection (1) of section
13 718.503, Florida Statutes, is amended to read:

14 718.503 Developer disclosure prior to sale;
15 nondeveloper unit owner disclosure prior to sale;
16 voidability.--

17 (1) DEVELOPER DISCLOSURE.--

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

21 1. Contain the following legend in conspicuous type:
22 THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN
23 NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER
24 THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND
25 RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED
26 TO HIM OR HER BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA
27 STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY
28 DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL
29 WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF
30 ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING
31 IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED

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1 WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT.
2 BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE
3 THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS
4 REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL
5 TERMINATE AT CLOSING.

6 2. Contain the following caveat in conspicuous type on
7 the first page of the contract: ORAL REPRESENTATIONS CANNOT
8 BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE
9 DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE
10 MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION
11 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A
12 BUYER OR LESSEE. A PURCHASER HAS NO CLAIM OR CAUSE OF ACTION
13 AGAINST THE DEVELOPER FOR THE PURCHASER'S RELIANCE ON ORAL
14 REPRESENTATIONS OR INFORMATION NOT CONTAINED IN THIS CONTRACT
15 OR IN THE PROSPECTUS. A PURCHASER MAY ONLY MAKE A CLAIM OR
16 INSTITUTE A CAUSE OF ACTION AGAINST THE DEVELOPER FOR THE
17 PURCHASER'S RELIANCE ON THE TERMS OF THIS CONTRACT OR ON
18 MATTERS SET FORTH IN THE PROSPECTUS.

19 3. If the unit has been occupied by someone other than
20 the buyer, contain a statement that the unit has been
21 occupied.

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

27 5. If the contract is for the lease of a unit for a
28 term of 5 years or more, include as an exhibit a copy of the
29 proposed lease.

30 6. If the contract is for the sale or lease of a unit
31 that is subject to a lien for rent payable under a lease of a

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1 recreational facility or other commonly used facility, contain
2 within the text the following statement in conspicuous type:
3 THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO
4 A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMONLY USED
5 FACILITIES. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF
6 THE LIEN.

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

11 8. If the contract is for the sale or transfer of a
12 unit in a condominium in which timeshare estates have been or
13 may be created, contain within the text in conspicuous type:
14 UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES.
15 The contract for the sale of a fee interest in a timeshare
16 estate shall also contain, in conspicuous type, the following:
17 FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS
18 LEVIED BY TAXING AUTHORITIES AGAINST A FEE INTEREST IN A
19 TIMESHARE ESTATE, THE MANAGING ENTITY IS GENERALLY CONSIDERED
20 THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE THE RIGHT TO
21 CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY RELATING TO YOUR
22 TIMESHARE ESTATE PURSUANT TO THE PROVISIONS OF CHAPTER 194,
23 FLORIDA STATUTES.

24 Section 5. Subsection (3) is added to section 718.506,
25 Florida Statutes, to read:

26 718.506 Publication of false and misleading
27 information.--

28 (3) A person has no cause of action against a
29 developer for any oral representation or information that is
30 not contained in the developer's advertising and promotional
31 materials, including, but not limited to, a prospectus, the

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1 items required as exhibits to a prospectus, brochures, and
2 newspaper advertising.

3 Section 6. This act shall take effect July 1, 2001.
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6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 remove from the title of the bill: the entire title
9

10 and insert in lieu thereof:

11 A bill to be entitled

12 An act relating to condominiums; amending s.
13 718.203, F.S.; relieving the developer of
14 liability for certain defects if the developer
15 has met prescribed conditions; creating s.
16 718.3027, F.S.; requiring prelitigation
17 disclosure to and approval by owners; requiring
18 a disclosure; providing that a prelitigation
19 disclosure is not admissible in evidence;
20 amending s. 718.301, F.S.; providing for the
21 effect of actions taken by members of the board
22 of administration of an association; amending
23 s. 718.503, F.S.; providing requirements for
24 developer disclosure in certain contracts for
25 the sale or lease of a residential unit;
26 amending s. 718.506, F.S.; abrogating the right
27 to a cause of action against a developer for an
28 oral representation or information that is not
29 in the developer's promotional materials;
30 providing an effective date.
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