

Amendment No. 01 (for drafter's use only)

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

The Committee on Judicial Oversight offered the following:

Amendment (with title amendment)

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

Section 1. Subsection (11) is added to section
718.116, Florida Statutes, to read:

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

(11) No more than 50 percent of any assessment made
but not yet collected by the association may be used as
collateral by the association to secure financing of the
association's efforts to pursue litigation or remedy
construction defects.

Section 2. 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

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1 licensed to do business in this state and has assigned or
2 otherwise made available the bond or the proceeds thereof to
3 the association for a period equal to or greater than the
4 warranty periods in s. 718.203, the developer has no
5 liability, under the Condominium Act or otherwise at law or in
6 equity, to the association or to the purchaser of each unit
7 for any construction defects or deficiencies that are within
8 the scope of the developer's contract with the contractor and
9 all subcontractors and suppliers.

10 (9) If the developer has required the engineer to
11 maintain a professional-malpractice policy that has minimum
12 limits of \$1 million and was issued by an insurer licensed to
13 do business in this state and has assigned or otherwise made
14 available the policy or the proceeds thereof to the
15 association for a period equal to or greater than the warranty
16 periods in s. 718.213, the developer has no liability to the
17 association or to the purchaser of each unit, under the
18 Condominium Act or otherwise at law or in equity, for any
19 defects in engineering design or engineering services that are
20 within the scope of the developer's contract with the
21 engineer.

22 Section 3. Section 718.3027, Florida Statutes, is
23 created to read:

24 718.3027 Prelitigation disclosure to and approval by
25 owners.--

26 (1) Before commencing any litigation against the
27 developer in the name of the association involving amounts in
28 controversy in excess of \$100,000, the association must
29 furnish to each owner a separate document entitled "Litigation
30 Disclosure Notice," which must be in a format approved by the
31 division.

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1 (2) This Litigation Disclosure Notice must inform each
2 owner of the basis for the association's contemplated
3 litigation; the professional qualifications of the person
4 making the allegations supporting the association's claim; the
5 response of the adverse party to the allegations and whether
6 the adverse party has refused or offered to perform remedial
7 work; the efforts made to mediate or resolve the claim; the
8 projected attorney's fees, expert fees, and other costs to the
9 association of the proposed litigation or adversarial
10 proceeding; the association's probability of success of the
11 litigation or adversarial proceeding; the association's
12 probability of collecting a judgment resulting from the
13 litigation or adversarial proceeding; and the probability of
14 association liability for attorney's fees and costs associated
15 with the litigation or adversarial proceeding.

16 (3) Litigation based upon the Litigation Disclosure
17 Notice may not be commenced unless approved in advance by a
18 majority of the owners or by such greater number of the owners
19 as is required by the declaration of the condominium operated
20 by the association.

21 Section 4. Section 718.3028, Florida Statutes, is
22 created to read:

23 718.3028 Prelitigation arbitration.--Before filing
24 litigation involving amounts in a controversy in excess of
25 \$100,000, the dispute must be submitted to mandatory
26 nonbinding arbitration as provided by this section.

27 Section 5. Present subsection (6) of section 718.301,
28 Florida Statutes, is redesignated as subsection (7) of that
29 section and new subsection (6) is added to that section to
30 read:

31 718.301 Transfer of association control.--

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1 (6) Actions taken by members of the board of
2 administration designated by the developer are considered
3 actions taken by the developer and the developer is
4 responsible to the association and its members for all such
5 actions.

6 Section 6. Paragraph (a) of subsection (1) of section
7 718.503, Florida Statutes, is amended to read:

8 718.503 Developer disclosure prior to sale;
9 nondeveloper unit owner disclosure prior to sale;
10 voidability.--

11 (1) DEVELOPER DISCLOSURE.--

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

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

31 2. Contain the following caveat in conspicuous type on

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1 the first page of the contract: ORAL REPRESENTATIONS CANNOT
2 BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE
3 DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE
4 MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION
5 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A
6 BUYER OR LESSEE. A PURCHASER HAS NO CLAIM OR CAUSE OF ACTION
7 AGAINST THE DEVELOPER FOR THE PURCHASER'S RELIANCE ON ORAL
8 REPRESENTATIONS OR INFORMATION NOT CONTAINED IN THIS
9 AGREEMENT.

10 3. If the unit has been occupied by someone other than
11 the buyer, contain a statement that the unit has been
12 occupied.

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

18 5. If the contract is for the lease of a unit for a
19 term of 5 years or more, include as an exhibit a copy of the
20 proposed lease.

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

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

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1 request.

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

15 Section 7. This act shall take effect July 1, 2001.

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

19 And the title is amended as follows:

20 remove from the title of the bill: the entire title

21

22 and insert in lieu thereof:

23 A bill to be entitled

24 An act relating to condominiums; amending s.
25 718.116, F.S.; limiting the portion of an
26 assessment that has been made but not collected
27 which may be used as collateral for financing
28 litigation or efforts to remedy construction
29 defects; amending s. 718.203, F.S.; relieving
30 the developer of liability for certain defects
31 if the developer has met prescribed conditions;

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1 creating s. 718.3027, F.S.; requiring
2 prelitigation disclosure to and approval by
3 owners; creating s. 718.3028, F.S.; providing
4 for prelitigation arbitration in specified
5 cases; amending s. 718.301, F.S.; providing for
6 the effect of actions taken by members of the
7 board of administration of an association;
8 amending s. 718.503, F.S.; providing
9 requirements for developer disclosure in
10 certain contracts for the sale or lease of a
11 residential unit; providing an effective date.

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