

Bill No. CS for SB 348

Amendment No.      Barcode 514528

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Geller moved the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Section 326.001, Florida Statutes, is amended to read:

326.001 Short title.--This chapter Sections  
~~326.001-326.006~~ may be cited as the "Yacht and Ship Brokers'  
Act."

Section 2. Section 326.002, Florida Statutes, is amended to read:

326.002 Definitions.--As used in this chapter ~~ss.~~  
~~326.001-326.006~~, the term:

(1) "Broker" means a person who, for or in expectation of compensation: sells, offers, or negotiates to sell; buys, offers, or negotiates to buy; solicits or obtains listings of; or negotiates the purchase, sale, or exchange of, yachts for other persons.

(2) "Department" ~~"Division"~~ means the ~~Division of~~

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1 ~~Florida Land Sales, Condominiums, and Mobile Homes of the~~  
 2 Department of Business and Professional Regulation.

3 (3) "Salesperson" means a person who, for or in  
 4 expectation of compensation, is employed by a broker to  
 5 perform any acts of a broker.

6 (4) "Yacht" means any vessel which is propelled by  
 7 sail or machinery in the water which exceeds 32 feet in  
 8 length, and which weighs less than 300 gross tons.

9 (5) "Person" means an individual, partnership, firm,  
 10 corporation, association, or other entity.

11 Section 3. Section 326.003, Florida Statutes, is  
 12 amended to read:

13 326.003 Administration.--The department division  
 14 shall:

15 (1) Administer ~~ss. 326.001-326.006~~ and collect fees  
 16 sufficient to administer this chapter ~~ss. 326.001-326.006~~.

17 (2) Adopt rules pursuant to ss. 120.536(1) and 120.54  
 18 necessary to administer this chapter ~~implement ss.~~  
 19 ~~326.001-326.006~~ and to classify brokers and salespersons and  
 20 regulate their activities.

21 (3) Enforce the provisions of this chapter ~~ss.~~  
 22 ~~326.001-326.006~~ against any person who operates as a broker or  
 23 salesperson without a license.

24 Section 4. Section 326.004, Florida Statutes, is  
 25 amended to read:

26 326.004 Licensing.--

27 (1) A person may not act as a broker or salesperson  
 28 unless licensed under the Yacht and Ship Brokers' Act. The  
 29 department division shall adopt rules establishing a procedure  
 30 for the biennial renewal of licenses.

31 (2) A broker may not engage in business as a broker

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1 under a fictitious name unless his or her license is issued in  
2 such name.

3 (3) A license is not required for:

4 (a) A person who sells his or her own yacht.

5 (b) An attorney at law for services rendered in his or  
6 her professional capacity.

7 (c) A receiver, trustee, or other person acting under  
8 a court order.

9 (d) A transaction involving the sale of a new yacht.

10 (e) A transaction involving the foreclosure of a  
11 security interest in a yacht.

12 (4) Any person who purchases a used yacht for resale  
13 must transfer title to such yacht into his or her name and  
14 maintain the title or bill of sale in his or her possession to  
15 be exempt from licensure.

16 (5) The department ~~division~~ by rule shall establish  
17 fees for application, initial licensing, biennial renewal, and  
18 reinstatement of licenses in an amount not to exceed \$500.  
19 The fees must be set in an amount that is adequate to  
20 proportionately fund the expenses of the department ~~division~~  
21 in this chapter ~~ss. 326.001-326.006~~.

22 (6) The department ~~division~~ may deny a license or  
23 license renewal to any applicant who does not:

24 (a) Furnish proof satisfactory to the department  
25 ~~division~~ that he or she is of good moral character.

26 (b) Certify that he or she has never been convicted of  
27 a felony.

28 (c) Post the bond required by the Yacht and Ship  
29 Brokers' Act.

30 (d) Demonstrate that he or she is a resident of this  
31 state or that he or she conducts business in this state.

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1 (e) Furnish a full set of fingerprints taken within  
2 the 6 months immediately preceding the submission of the  
3 application.

4 (f) Have a current license and has operated as a  
5 broker or salesperson without a license.

6 (7)(a) Before any license may be issued to a yacht or  
7 ship broker, he or she must deliver to the department ~~division~~  
8 a good and sufficient surety bond or irrevocable letter of  
9 credit, executed by the broker as principal, in the sum of  
10 \$25,000.

11 (b) Surety bonds and irrevocable letters of credit  
12 must be in a form to be approved by the department ~~division~~  
13 and must be conditioned upon the broker complying with the  
14 terms of any written contract made by such broker in  
15 connection with the sale or exchange of any yacht or ship and  
16 not violating any of the provisions of the Yacht and Ship  
17 Brokers' Act in the conduct of the business for which he or  
18 she is licensed. The bonds and letters of credit must be  
19 delivered to the department ~~division~~ and in favor of any  
20 person in a transaction who suffers any loss as a result of  
21 any violation of the conditions in this chapter ~~ss.~~  
22 ~~326.001-326.006~~. When the department ~~division~~ determines that  
23 a person has incurred a loss as a result of a violation of the  
24 Yacht and Ship Brokers' Act, it shall notify the person in  
25 writing of the existence of the bond or letter of credit. The  
26 bonds and letters of credit must cover the license period, and  
27 a new bond or letter of credit or a proper continuation  
28 certificate must be delivered to the department ~~division~~ at  
29 the beginning of each license period. However, the aggregate  
30 liability of the surety in any one year may not exceed the sum  
31 of the bond or, in the case of a letter of credit, the

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1 aggregate liability of the issuing bank may not exceed the sum  
2 of the credit.

3 (c) Surety bonds must be executed by a surety company  
4 authorized to do business in the state as surety, and  
5 irrevocable letters of credit must be issued by a bank  
6 authorized to do business in the state as a bank.

7 (d) Irrevocable letters of credit must be engaged by a  
8 bank as an agreement to honor demands for payment as specified  
9 in this section.

10

11 The security for a broker must remain on deposit for a period  
12 of 1 year after he or she ceases to be a broker.

13 (8) A person may not be licensed as a broker unless he  
14 or she has been a salesperson for at least 2 consecutive  
15 years, and may not be licensed as a broker after October 1,  
16 1990, unless he or she has been licensed as a salesperson for  
17 at least 2 consecutive years.

18 (9) An applicant for a salesperson's license or its  
19 renewal must deposit with the department ~~division~~ a bond or  
20 equivalent securities in the sum of \$10,000 subject to the  
21 conditions in subsection (7).

22 (10) Upon a final judgment being rendered against a  
23 yacht broker or salesperson for a violation of this chapter  
24 ~~ss. 326.001-326.006~~ which results in any action being  
25 commenced on the bond or letter of credit, the department  
26 ~~division~~ may require the filing of a new bond or letter of  
27 credit and immediately on the recovery in any action on such  
28 bond or letter of credit, the broker or salesperson involved  
29 must file a new bond or letter of credit. His or her failure  
30 to do so within 10 days constitutes grounds for the suspension  
31 or revocation of his or her license.

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1           (11) Any person injured by the fraud, deceit, or  
2 willful negligence of any broker or salesperson or by the  
3 failure of any broker or salesperson to comply with the Yacht  
4 and Ship Brokers' Act or other law may file an action for  
5 damages upon the respective bonds against the principals and  
6 the surety.

7           (12) If a surety notifies the department ~~division~~ that  
8 it is no longer the surety for a licensee, the department  
9 ~~division~~ shall notify the licensee of such withdrawal by  
10 certified mail, return receipt requested, addressed to the  
11 licensee's principal office. Upon the termination of such  
12 surety the licensee's license is automatically suspended until  
13 he or she files a new bond with the department ~~division~~.

14           (13) Each broker must maintain a principal place of  
15 business in this state and may establish branch offices in the  
16 state. A separate license must be maintained for each branch  
17 office. The department ~~division~~ shall establish by rule a fee  
18 not to exceed \$100 for each branch office license.

19           (14)(a) Each license must be prominently displayed in  
20 the office of the broker.

21           (b) Each salesperson's license must remain in the  
22 possession of the employing broker until canceled or until the  
23 salesperson leaves such employment. Immediately upon a  
24 salesperson's withdrawal from the employment of a broker, the  
25 broker must return the salesperson's license to the department  
26 ~~division~~ for cancellation.

27           (15) The department ~~division~~ shall provide by rule for  
28 the issuance of a temporary 90-day license to an applicant  
29 while the Florida Department of Law Enforcement and the  
30 Federal Bureau of Investigation ~~conducts~~ a national  
31 criminal history analysis of the applicant by means of

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1 fingerprint identification.

2 Section 5. Section 326.006, Florida Statutes, is  
3 amended to read:

4 326.006 Powers and duties of department ~~division~~.--

5 (1) Proceedings under the Yacht and Ship Brokers' Act  
6 shall be conducted pursuant to chapter 120.

7 (2) The department ~~may division has the power to~~  
8 enforce and ensure compliance with the provisions of this  
9 chapter and rules adopted under this chapter relating to the  
10 sale and ownership of yachts and ships. In performing its  
11 duties, the department ~~division~~ has the following powers and  
12 duties:

13 (a) The department ~~division~~ may make necessary public  
14 or private investigations within or outside this state to  
15 determine whether any person has violated this chapter or any  
16 rule or order issued under this chapter, to aid in the  
17 enforcement of this chapter, or to aid in the adoption of  
18 rules or forms under this chapter.

19 (b) The department ~~division~~ may require or permit any  
20 person to file a statement in writing, under oath or  
21 otherwise, as the department ~~division~~ determines, as to the  
22 facts and circumstances concerning a matter to be  
23 investigated.

24 (c) For the purpose of any investigation under this  
25 chapter, the secretary of the department ~~division director~~ or  
26 any officer or employee designated by the secretary ~~division~~  
27 ~~director~~ may administer oaths or affirmations, subpoena  
28 witnesses and compel their attendance, take evidence, and  
29 require the production of any matter that is relevant to the  
30 investigation, including the existence, description, nature,  
31 custody, condition, and location of any books, documents, or

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1 other tangible things and the identity and location of persons  
2 having knowledge of relevant facts or any other matter  
3 reasonably calculated to lead to the discovery of material  
4 evidence. Upon the failure by a person to obey a subpoena or  
5 to answer questions propounded by the department investigating  
6 officer and upon reasonable notice to all persons affected  
7 thereby, the department division may apply to the circuit  
8 court for an order compelling compliance, may impose a civil  
9 penalty, and may suspend or revoke the licensee's license.

10 (d) Notwithstanding any remedies available to a yacht  
11 or ship purchaser, if the department division has reasonable  
12 cause to believe that a violation of any provision of this  
13 chapter or rule adopted under this chapter has occurred, the  
14 department division may institute enforcement proceedings in  
15 its own name against any broker or salesperson or any of his  
16 or her assignees or agents, or against any unlicensed person  
17 or any of his or her assignees or agents, as follows:

18 1. The department division may permit a person whose  
19 conduct or actions are under investigation to waive formal  
20 proceedings and enter into a consent proceeding whereby  
21 orders, rules, or letters of censure or warning, whether  
22 formal or informal, may be entered against the person.

23 2. The department division may issue an order  
24 requiring the broker or salesperson or any of his or her  
25 assignees or agents, or requiring any unlicensed person or any  
26 of his or her assignees or agents, to cease and desist from  
27 the unlawful practice and take such affirmative action as in  
28 the judgment of the department division will carry out the  
29 purposes of this chapter.

30 3. The department division may bring an action in  
31 circuit court on behalf of a class of yacht or ship purchasers



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1 for declaratory relief, injunctive relief, or restitution.

2 4. The department ~~division~~ may impose a civil penalty  
3 against a broker or salesperson or any of his or her assignees  
4 or agents, or against an unlicensed person or any of his or  
5 her assignees or agents, for any violation of this chapter or  
6 a rule adopted under this chapter. A penalty may be imposed  
7 for each day of continuing violation, but in no event may the  
8 penalty for any offense exceed \$10,000. All amounts collected  
9 must be deposited with the Treasurer to the credit of the  
10 Professional Regulation Division of Florida Land Sales,  
11 Condominiums, and Mobile Homes Trust Fund. If a broker,  
12 salesperson, or unlicensed person working for a broker, fails  
13 to pay the civil penalty, the department ~~division~~ shall  
14 thereupon issue an order suspending the broker's license until  
15 such time as the civil penalty is paid or may pursue  
16 enforcement of the penalty in a court of competent  
17 jurisdiction. The order imposing the civil penalty or the  
18 order of suspension may not become effective until 20 days  
19 after the date of such order. Any action commenced by the  
20 department ~~division~~ must be brought in the county in which the  
21 department ~~division~~ has its executive offices or in the county  
22 where the violation occurred.

23 (e) The department ~~division~~ may suspend or revoke the  
24 license of a broker or salesperson who:

25 1. Makes a substantial and intentional  
26 misrepresentation, with respect to a transaction involving a  
27 yacht, upon which any person has relied.

28 2. Makes a false warranty, with respect to a  
29 transaction involving a yacht, of a character likely to  
30 influence, persuade, or induce any person with whom business  
31 is transacted.

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- 1           3. Engages in continued misrepresentation or makes  
2 false warranties with respect to transactions involving a  
3 yacht, whether or not relied upon by another person.
- 4           4. Acts for both the buyer and seller in a transaction  
5 involving a yacht without the knowledge and written consent of  
6 both parties.
- 7           5. Commingles the money or other property of his or  
8 her principal with his or her own.
- 9           6. Commits fraud or dishonest acts in the conduct of  
10 any transaction involving a yacht.
- 11          7. Allows an unlicensed person to use his or her name  
12 to evade the provisions of the Yacht and Ship Brokers' Act.
- 13          8. Violates any law governing the transactions  
14 involving a yacht, including any provision relating to the  
15 collection or payment of sales or use taxes.
- 16          9. Engages in acts that are evidence of a lack of good  
17 moral character.
- 18          10. Is convicted of a felony.
- 19          (f) The department ~~division~~ may suspend or revoke the  
20 license of a broker or salesperson who has:
- 21            1. Procured a license for himself or herself or  
22 another by fraud, misrepresentation, falsification, or deceit.
- 23            2. Been found guilty of a felony or a crime of moral  
24 turpitude.
- 25            3. Had a license or registration revoked, suspended,  
26 or sanctioned in another state.
- 27          (3) All fees must be deposited in the Professional  
28 Regulation Division of Florida Land Sales, Condominiums, and  
29 Mobile Homes Trust Fund as provided by law.
- 30          Section 6. The regulation of yacht and ship brokers  
31 and salespersons is reassigned within the Department of

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1 Business and Professional Regulation from the Division of  
2 Florida Land Sales, Condominiums, and Mobile Homes to the  
3 Division of Professions. All funds collected by the department  
4 pursuant to the regulation of yacht and ship brokers and  
5 salespersons and all funds in the account created within the  
6 Florida Land Sales, Condominiums, and Mobile Homes Trust Fund  
7 for such regulation shall be deposited in an account created  
8 within the Professional Regulation Trust Fund for the same  
9 purpose.

10 Section 7. Effective upon this act becoming a law,  
11 section 399.061, Florida Statutes, is amended to read:

12 399.061 Inspections; correction of deficiencies.--

13 (1)(a) All elevators or other conveyances subject to  
14 this chapter must be annually inspected by a certified  
15 elevator inspector through a third-party inspection service,  
16 or by a municipality or county under contract with the  
17 division pursuant to s. 399.13. If the elevator or other  
18 conveyance is by a third-party inspection service certified as  
19 a qualified elevator inspector or maintained pursuant to a  
20 service maintenance contract continuously in force, it shall  
21 be inspected at least once every two years by a certified  
22 elevator inspector not employed by or otherwise associated  
23 with the maintenance company; however, if the elevator is not  
24 an escalator or a dumbwaiter and the elevator serves only two  
25 adjacent floors and is covered by a service maintenance  
26 contract, no inspection shall be required so long as the  
27 service contract remains in effect. A statement verifying the  
28 existence, performance, and cancellation of each service  
29 maintenance contract must be filed annually with the division  
30 as prescribed by rule. All elevators covered by a service  
31 maintenance contract shall be inspected by a

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~~1 certificate of competency holder at least once every 2 years;~~  
~~2 however, if the elevator is not an escalator or a dumbwaiter~~  
~~3 and the elevator serves only two adjacent floors and is~~  
~~4 covered by a service maintenance contract, no inspection shall~~  
~~5 be required so long as the service contract remains in effect.~~

6 (b) The division may inspect an elevator whenever  
7 necessary to ensure its safe operation or when a third-party  
8 inspection service is not available for routine inspection.

9 (2) The division may ~~shall~~ employ state elevator  
10 inspectors to conduct the inspections as required by  
11 subsection (1) and may charge an inspection fee for each  
12 inspection sufficient to cover the costs of that inspection,  
13 as provided by rule. Each state elevator inspector shall hold  
14 a certificate of competency issued by the division.

15 (3) Whenever the division determines from the results  
16 of any inspection that, in the interest of the public safety,  
17 an elevator is in an unsafe condition, the division may seal  
18 the elevator or order the discontinuance of the use of the  
19 elevator until the division determines by inspection that such  
20 elevator has been satisfactorily repaired or replaced so that  
21 the elevator may be operated in a safe manner.

22 (4) When the division determines that an elevator is  
23 in violation of this chapter, the division may issue an order  
24 to the elevator owner requiring correction of the violation.

25 Section 8. Effective July 1, 2001, subsection (1) of  
26 section 455.213, Florida Statutes, is amended, and subsections  
27 (11) and (12) are added to that section, to read:

28 455.213 General licensing provisions.--

29 (1) Any person desiring to be licensed shall apply to  
30 the department in writing. The application for licensure shall  
31 be made on a form prepared and furnished by the department and

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1 include the applicant's social security number.

2 Notwithstanding any other provision of law, the department is

3 responsible for the printed or electronic content of all

4 initial licensure and licensure renewal documents. Such

5 documents must require information including as appropriate

6 demographics, education, work history, personal background,

7 criminal history, finances, business information, complaints,

8 inspections, investigations, discipline, bonding, signature

9 notarization, photographs, performance periods, reciprocity,

10 local government approvals, supporting documentation, periodic

11 reporting requirements, fingerprint requirements, continuing

12 education requirements, and ongoing education monitoring.The

13 application shall be supplemented as needed to reflect any

14 material change in any circumstance or condition stated in the

15 application which takes place between the initial filing of

16 the application and the final grant or denial of the license

17 and which might affect the decision of the department. In

18 order to further the economic development goals of the state,

19 and notwithstanding any law to the contrary, the department

20 may enter into an agreement with the county tax collector for

21 the purpose of appointing the county tax collector as the

22 department's agent to accept applications for licenses and

23 applications for renewals of licenses. The agreement must

24 specify the time within which the tax collector must forward

25 any applications and accompanying application fees to the

26 department. In cases where a person applies or schedules

27 directly with a national examination organization or

28 examination vendor to take an examination required for

29 licensure, any organization- or vendor-related fees associated

30 with the examination may be paid directly to the organization

31 or vendor.

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1           (11) Any submission required to be in writing may be  
2 made by electronic means.

3           (12) The department may not issue or renew a license  
4 to any person who is not in compliance with all provisions of  
5 a final order of a board or the department until that person  
6 is in compliance with all terms and conditions of the final  
7 order. The department may not issue or renew a license to any  
8 person who is not in compliance with all legal obligations  
9 under this chapter or the relevant practice act, including,  
10 but not limited to, the obligation to pay all fees and  
11 assessments that are owed and to complete all continuing  
12 education requirements. This subsection applies to all  
13 divisions within the department.

14           Section 9. Section 455.224, Florida Statutes, is  
15 amended to read:

16           455.224 Authority to issue citations.--

17           (1) Notwithstanding s. 455.225, the board or the  
18 department shall adopt rules to permit the issuance of  
19 citations. The citation shall be issued to the subject and  
20 shall contain the subject's name and address, the subject's  
21 license number if applicable, a brief factual statement, the  
22 sections of the law allegedly violated, and the penalty  
23 imposed. The citation must clearly state that the subject may  
24 choose, in lieu of accepting the citation, to follow the  
25 procedure under s. 455.225. If the subject disputes the matter  
26 in the citation, the procedures set forth in s. 455.225 must  
27 be followed. However, if the subject does not dispute the  
28 matter in the citation with the department within 30 days  
29 after the citation is served, the citation becomes a final  
30 order and constitutes discipline. The penalty shall be a fine  
31 or other conditions as established by rule.

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1           (2) The board, or the department when there is no  
2 board, shall adopt rules designating violations for which a  
3 citation may be issued. Such rules shall designate as  
4 citation violations those violations for which there is no  
5 substantial threat to the public health, safety, and welfare.

6           (3) The department shall be entitled to recover the  
7 costs of investigation, in addition to any penalty provided  
8 according to board or department rule, as part of the penalty  
9 levied pursuant to the citation.

10           (4) A citation must be issued within 6 months after  
11 the filing of the complaint that is the basis for the  
12 citation.

13           (5) Service of a citation may be made by personal  
14 service or certified mail, restricted delivery, to the subject  
15 at the subject's last known address.

16           (6) Within its jurisdiction, the department has  
17 exclusive authority to, and shall adopt rules to, designate  
18 those violations for which the licensee is subject to the  
19 issuance of a citation and designate the penalties for those  
20 violations if any board fails to incorporate this section into  
21 rules by January 1, 1992. A board created on or after January  
22 1, 1992, has 6 months in which to enact rules designating  
23 violations and penalties appropriate for citation offenses.  
24 Failure to enact such rules gives the department exclusive  
25 authority to adopt rules as required for implementing this  
26 section. A board has continuous authority to amend its rules  
27 adopted pursuant to this section.

28           (7) Notwithstanding s. 455.017, any division within  
29 the department may establish a citation program pursuant to  
30 the provisions of this section in the enforcement of its  
31 regulatory provisions. Any citation issued by a division

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1 pursuant to this section must clearly state that the subject  
 2 may choose, in lieu of accepting the citation, to follow the  
 3 existing procedures established by law. If the subject does  
 4 not dispute the matter in the citation with the division  
 5 within 30 days after the citation is served, the citation  
 6 becomes a final order and constitutes discipline. The penalty  
 7 shall be a fine or other conditions as established by rule of  
 8 the appropriate division.

9 Section 10. Subsection (5) is added to section  
 10 718.1255, Florida Statutes, to read:

11 718.1255 Alternative dispute resolution; voluntary  
 12 mediation; mandatory nonbinding arbitration; disputes  
 13 involving election irregularities; legislative findings.--

14 (1) DEFINITIONS.--As used in this section, the term  
 15 "dispute" means any disagreement between two or more parties  
 16 that involves:

17 (a) The authority of the board of directors, under  
 18 this chapter or association document to:

19 1. Require any owner to take any action, or not to  
 20 take any action, involving that owner's unit or the  
 21 appurtenances thereto.

22 2. Alter or add to a common area or element.

23 (b) The failure of a governing body, when required by  
 24 this chapter or an association document, to:

- 25 1. Properly conduct elections.
- 26 2. Give adequate notice of meetings or other actions.
- 27 3. Properly conduct meetings.
- 28 4. Allow inspection of books and records.

29  
 30 "Dispute" does not include any disagreement that primarily  
 31 involves: title to any unit or common element; the



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1 interpretation or enforcement of any warranty; the levy of a  
2 fee or assessment, or the collection of an assessment levied  
3 against a party; the eviction or other removal of a tenant  
4 from a unit; alleged breaches of fiduciary duty by one or more  
5 directors; or claims for damages to a unit based upon the  
6 alleged failure of the association to maintain the common  
7 elements or condominium property.

8 (2) VOLUNTARY MEDIATION.--Voluntary mediation through  
9 Citizen Dispute Settlement Centers as provided for in s.  
10 44.201 is encouraged.

11 (3) LEGISLATIVE FINDINGS.--

12 (a) The Legislature finds that unit owners are  
13 frequently at a disadvantage when litigating against an  
14 association. Specifically, a condominium association, with its  
15 statutory assessment authority, is often more able to bear the  
16 costs and expenses of litigation than the unit owner who must  
17 rely on his or her own financial resources to satisfy the  
18 costs of litigation against the association.

19 (b) The Legislature finds that the courts are becoming  
20 overcrowded with condominium and other disputes, and further  
21 finds that alternative dispute resolution has been making  
22 progress in reducing court dockets and trials and in offering  
23 a more efficient, cost-effective option to court litigation.  
24 However, the Legislature also finds that alternative dispute  
25 resolution should not be used as a mechanism to encourage the  
26 filing of frivolous or nuisance suits.

27 (c) There exists a need to develop a flexible means of  
28 alternative dispute resolution that directs disputes to the  
29 most efficient means of resolution.

30 (d) The high cost and significant delay of circuit  
31 court litigation faced by unit owners in the state can be

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1 alleviated by requiring nonbinding arbitration and mediation  
2 in appropriate cases, thereby reducing delay and attorney's  
3 fees while preserving the right of either party to have its  
4 case heard by a jury, if applicable, in a court of law.

5 (4) MANDATORY NONBINDING ARBITRATION AND MEDIATION OF  
6 DISPUTES.--The Division of Florida Land Sales, Condominiums,  
7 and Mobile Homes of the Department of Business and  
8 Professional Regulation shall employ full-time attorneys to  
9 act as arbitrators to conduct the arbitration hearings  
10 provided by this chapter. The division may also certify  
11 attorneys who are not employed by the division to act as  
12 arbitrators to conduct the arbitration hearings provided by  
13 this section. No person may be employed by the department as a  
14 full-time arbitrator unless he or she is a member in good  
15 standing of The Florida Bar. The department shall promulgate  
16 rules of procedure to govern such arbitration hearings  
17 including mediation incident thereto. The decision of an  
18 arbitrator shall be final; however, such a decision shall not  
19 be deemed final agency action. Nothing in this provision shall  
20 be construed to foreclose parties from proceeding in a trial  
21 de novo unless the parties have agreed that the arbitration is  
22 binding. If such judicial proceedings are initiated, the final  
23 decision of the arbitrator shall be admissible in evidence in  
24 the trial de novo.

25 (a) Prior to the institution of court litigation, a  
26 party to a dispute shall petition the division for nonbinding  
27 arbitration. The petition must be accompanied by a filing fee  
28 in the amount of \$50. Filing fees collected under this  
29 section must be used to defray the expenses of the alternative  
30 dispute resolution program.

31 (b) The petition must recite, and have attached

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1 thereto, supporting proof that the petitioner gave the  
2 respondents:

3 1. Advance written notice of the specific nature of  
4 the dispute;

5 2. A demand for relief, and a reasonable opportunity  
6 to comply or to provide the relief; and

7 3. Notice of the intention to file an arbitration  
8 petition or other legal action in the absence of a resolution  
9 of the dispute.

10

11 Failure to include the allegations or proof of compliance with  
12 these prerequisites requires dismissal of the petition without  
13 prejudice.

14 (c) Upon receipt, the petition shall be promptly  
15 reviewed by the division to determine the existence of a  
16 dispute and compliance with the requirements of paragraphs (a)  
17 and (b). If emergency relief is required and is not available  
18 through arbitration, a motion to stay the arbitration may be  
19 filed. The motion must be accompanied by a verified petition  
20 alleging facts that, if proven, would support entry of a  
21 temporary injunction, and if an appropriate motion and  
22 supporting papers are filed, the division may abate the  
23 arbitration pending a court hearing and disposition of a  
24 motion for temporary injunction.

25 (d) Upon determination by the division that a dispute  
26 exists and that the petition substantially meets the  
27 requirements of paragraphs (a) and (b) and any other  
28 applicable rules, a copy of the petition shall forthwith be  
29 served by the division upon all respondents.

30 (e) Either before or after the filing of the  
31 respondents' answer to the petition, any party may request

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1 that the arbitrator refer the case to mediation under this  
2 section and any rules adopted by the division. Upon receipt  
3 of a request for mediation, the division shall promptly  
4 contact the parties to determine if there is agreement that  
5 mediation would be appropriate. If all parties agree, the  
6 dispute must be referred to mediation. Notwithstanding a lack  
7 of an agreement by all parties, the arbitrator may refer a  
8 dispute to mediation at any time.

9 (f) Upon referral of a case to mediation, the parties  
10 must select a mutually acceptable mediator. To assist in the  
11 selection, the arbitrator shall provide the parties with a  
12 list of both volunteer and paid mediators that have been  
13 certified by the division under s. 718.501. If the parties  
14 are unable to agree on a mediator within the time allowed by  
15 the arbitrator, the arbitrator shall appoint a mediator from  
16 the list of certified mediators. If a case is referred to  
17 mediation, the parties shall attend a mediation conference, as  
18 scheduled by the parties and the mediator. If any party fails  
19 to attend a duly noticed mediation conference, without the  
20 permission or approval of the arbitrator or mediator, the  
21 arbitrator must impose sanctions against the party, including  
22 the striking of any pleadings filed, the entry of an order of  
23 dismissal or default if appropriate, and the award of costs  
24 and attorneys' fees incurred by the other parties. Unless  
25 otherwise agreed to by the parties or as provided by order of  
26 the arbitrator, a party is deemed to have appeared at a  
27 mediation conference by the physical presence of the party or  
28 its representative having full authority to settle without  
29 further consultation, provided that an association may comply  
30 by having one or more representatives present with full  
31 authority to negotiate a settlement and recommend that the

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1 board of administration ratify and approve such a settlement  
2 within 5 days from the date of the mediation conference. The  
3 parties shall share equally the expense of mediation, unless  
4 they agree otherwise.

5 (g) The purpose of mediation as provided for by this  
6 section is to present the parties with an opportunity to  
7 resolve the underlying dispute in good faith, and with a  
8 minimum expenditure of time and resources.

9 (h) Mediation proceedings must generally be conducted  
10 in accordance with the Florida Rules of Civil Procedure, and  
11 these proceedings are privileged and confidential to the same  
12 extent as court-ordered mediation. Persons who are not parties  
13 to the dispute are not allowed to attend the mediation  
14 conference without the consent of all parties, with the  
15 exception of counsel for the parties and corporate  
16 representatives designated to appear for a party. If the  
17 mediator declares an impasse after a mediation conference has  
18 been held, the arbitration proceeding terminates, unless all  
19 parties agree in writing to continue the arbitration  
20 proceeding, in which case the arbitrator's decision shall be  
21 either binding or nonbinding, as agreed upon by the parties;  
22 in the arbitration proceeding, the arbitrator shall not  
23 consider any evidence relating to the unsuccessful mediation  
24 except in a proceeding to impose sanctions for failure to  
25 appear at the mediation conference. If the parties do not  
26 agree to continue arbitration, the arbitrator shall enter an  
27 order of dismissal, and either party may institute a suit in a  
28 court of competent jurisdiction. The parties may seek to  
29 recover any costs and attorneys' fees incurred in connection  
30 with arbitration and mediation proceedings under this section  
31 as part of the costs and fees that may be recovered by the

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1 prevailing party in any subsequent litigation.

2 (i) Arbitration shall be conducted according to rules  
3 promulgated by the division. The filing of a petition for  
4 arbitration shall toll the applicable statute of limitations.

5 (j) At the request of any party to the arbitration,  
6 such arbitrator shall issue subpoenas for the attendance of  
7 witnesses and the production of books, records, documents, and  
8 other evidence and any party on whose behalf a subpoena is  
9 issued may apply to the court for orders compelling such  
10 attendance and production. Subpoenas shall be served and shall  
11 be enforceable in the manner provided by the Florida Rules of  
12 Civil Procedure. Discovery may, in the discretion of the  
13 arbitrator, be permitted in the manner provided by the Florida  
14 Rules of Civil Procedure. Rules adopted by the division may  
15 authorize any reasonable sanctions except contempt for a  
16 violation of the arbitration procedural rules of the division  
17 or for the failure of a party to comply with a reasonable  
18 nonfinal order issued by an arbitrator which is not under  
19 judicial review.

20 (k) The arbitration decision shall be presented to the  
21 parties in writing. An arbitration decision is final in those  
22 disputes in which the parties have agreed to be bound. An  
23 arbitration decision is also final if a complaint for a trial  
24 de novo is not filed in a court of competent jurisdiction in  
25 which the condominium is located within 30 days. The right to  
26 file for a trial de novo entitles the parties to file a  
27 complaint in the appropriate trial court for a judicial  
28 resolution of the dispute. The prevailing party in an  
29 arbitration proceeding shall be awarded the costs of the  
30 arbitration and reasonable attorney's fees in an amount  
31 determined by the arbitrator. Such an award shall include the

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1 costs and reasonable attorney's fees incurred in the  
2 arbitration proceeding as well as the costs and reasonable  
3 attorney's fees incurred in preparing for and attending any  
4 scheduled mediation.

5 (1) The party who files a complaint for a trial de  
6 novo shall be assessed the other party's arbitration costs,  
7 court costs, and other reasonable costs, including attorney's  
8 fees, investigation expenses, and expenses for expert or other  
9 testimony or evidence incurred after the arbitration hearing  
10 if the judgment upon the trial de novo is not more favorable  
11 than the arbitration decision. If the judgment is more  
12 favorable, the party who filed a complaint for trial de novo  
13 shall be awarded reasonable court costs and attorney's fees.

14 (m) Any party to an arbitration proceeding may enforce  
15 an arbitration award by filing a petition in a court of  
16 competent jurisdiction in which the condominium is located. A  
17 petition may not be granted unless the time for appeal by the  
18 filing of a complaint for trial de novo has expired. If a  
19 complaint for a trial de novo has been filed, a petition may  
20 not be granted with respect to an arbitration award that has  
21 been stayed. If the petition for enforcement is granted, the  
22 petitioner shall recover reasonable attorney's fees and costs  
23 incurred in enforcing the arbitration award. A mediation  
24 settlement may also be enforced through the county or circuit  
25 court, as applicable, and any costs and fees incurred in the  
26 enforcement of a settlement agreement reached at mediation  
27 must be awarded to the prevailing party in any enforcement  
28 action.

29 (5) DISPUTES INVOLVING ELECTION IRREGULARITIES.--Every  
30 arbitration petition received by the division and required to  
31 be filed under this section challenging the legality of the

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1 election of any director of the board of administration shall  
2 be handled on an expedited basis in the manner provided by  
3 division rules for recall arbitration disputes.

4 Section 11. Section 702.09, Florida Statutes, is  
5 amended to read:

6 702.09 Definitions.--For the purposes of ss. 702.07  
7 and 702.08 the words "decree of foreclosure" shall include a  
8 judgment or order rendered or passed in the foreclosure  
9 proceedings in which the decree of foreclosure shall be  
10 rescinded, vacated, and set aside; the word "mortgage" shall  
11 mean any written instrument securing the payment of money or  
12 advances and shall include liens to secure payment of  
13 assessments arising under chapters 718, 719, and 720; the word  
14 "debt" shall include promissory notes, bonds, and all other  
15 written obligations given for the payment of money; the words  
16 "foreclosure proceedings" shall embrace every action in the  
17 circuit or county courts of this state wherein it is sought to  
18 foreclose a mortgage and sell the property covered by the  
19 same; and the word "property" shall mean and include both real  
20 and personal property.

21 Section 12. Paragraph (h) of subsection (4) and  
22 subsection (5) of section 718.104, Florida Statutes, are  
23 amended to read:

24 718.104 Creation of condominiums; contents of  
25 declaration.--Every condominium created in this state shall be  
26 created pursuant to this chapter.

27 (4) The declaration must contain or provide for the  
28 following matters:

29 (h) If a developer reserves the right, in a  
30 declaration recorded on or after July 1, 2000, to create a  
31 multicondominium, the declaration must state, or provide a



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1 specific formula for determining, the fractional or percentage  
2 shares of liability for the common expenses of the association  
3 and of ownership of the common surplus of the association to  
4 be allocated to the units in each condominium to be operated  
5 by the association. If a ~~the~~ declaration recorded on or after  
6 July 1, 2000, for a condominium operated by a multicondominium  
7 association, as originally recorded, fails to so provide, the  
8 share of liability for the common expenses of the association  
9 and of ownership of the common surplus of the association  
10 allocated to each unit in each condominium operated by the  
11 association shall be a fraction of the whole, the numerator of  
12 which is the number "one" and the denominator of which is the  
13 total number of units in all condominiums operated by the  
14 association.

15 (5) The declaration as originally recorded, or as  
16 amended pursuant to the procedures provided therein, may  
17 include covenants and restrictions concerning the use,  
18 occupancy, and transfer of the units permitted by law with  
19 reference to real property. With the exception of amendments  
20 that materially modify unit appurtenances as provided in s.  
21 718.110(4), amendments may be applied to owners of units  
22 existing as of the effective date of the amendment. This  
23 section is intended to clarify existing law and applies to  
24 associations existing on the effective date of this act.

25 However, the rule against perpetuities shall not defeat a  
26 right given any person or entity by the declaration for the  
27 purpose of allowing unit owners to retain reasonable control  
28 over the use, occupancy, and transfer of units.

29 Section 13. Paragraph (b) of subsection (2) of section  
30 718.106, Florida Statutes, is amended to read:

31 718.106 Condominium parcels; appurtenances; possession

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1 and enjoyment.--

2 (2) There shall pass with a unit, as appurtenances  
3 thereto:

4 (b) The exclusive right to use such portion of the  
5 common elements as may be provided by the declaration,  
6 including the right to transfer such right to other units or  
7 unit owners to the extent authorized by the declaration as  
8 originally recorded, or amendments to the declaration adopted  
9 pursuant to the provisions contained therein under s.  
10 718.110(2). Amendments to declarations of condominium  
11 providing for the transfer of use rights with respect to  
12 limited common elements are not amendments which materially  
13 modify unit appurtenances as described in s. 718.110(4).  
14 However, in order to be effective, the transfer of use rights  
15 with respect to limited common elements must be effectuated in  
16 conformity with the procedures set forth in the declaration as  
17 originally recorded or as amended. Further, such transfers  
18 must be evidenced by a written instrument which must be  
19 executed with the formalities of a deed and recorded in the  
20 land records of the county in which the condominium is located  
21 in order to be effective. Such instrument of transfer must  
22 also specify the legal description of the unit which is  
23 transferring use rights, as well as the legal description of  
24 the unit obtaining the transfer of such rights. This section  
25 is intended to clarify existing law and applies to  
26 associations existing on the effective date of this act.

27 Section 14. Subsection (4) of section 718.110, Florida  
28 Statutes, is amended to read:

29 718.110 Amendment of declaration; correction of error  
30 or omission in declaration by circuit court.--

31 (4) Unless otherwise provided in the declaration as

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1 originally recorded, no amendment may change the configuration  
2 or size of any unit in any material fashion, materially alter  
3 or modify the appurtenances to the unit, or change the  
4 proportion or percentage by which the unit owner shares the  
5 common expenses of the condominium and owns the common surplus  
6 of the condominium unless the record owner of the unit and all  
7 record owners of liens on the unit join in the execution of  
8 the amendment and unless all the record owners of all other  
9 units in the same condominium approve the amendment. The  
10 acquisition of property by the association, and material  
11 alterations or substantial additions to such property or the  
12 common elements by the association in accordance with s.  
13 718.111(7) or s. 718.113, amendments providing for the  
14 transfer of use rights in limited common elements pursuant to  
15 s. 718.106(2)(b), and amendments restricting or modifying the  
16 right to lease condominium units shall not be deemed to  
17 constitute a material alteration or modification of the  
18 appurtenances to the units. With the exception of amendments  
19 that materially modify unit appurtenances as provided in this  
20 section, amendments may be applied to owners of units existing  
21 as of the effective date of the amendment. This section is  
22 intended to clarify existing law and applies to associations  
23 existing on the effective date of this act.A declaration  
24 recorded after April 1, 1992, may not require the approval of  
25 less than a majority of total voting interests of the  
26 condominium for amendments under this subsection, unless  
27 otherwise required by a governmental entity.

28 Section 15. Subsection (4), paragraph (a) of  
29 subsection (7), and subsection (13) of section 718.111,  
30 Florida Statutes, are amended to read:

31 718.111 The association.--

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1           (4) ASSESSMENTS; MANAGEMENT OF COMMON ELEMENTS.--The  
2 association has the power to make and collect assessments and  
3 to lease, maintain, repair, and replace the common elements or  
4 association property; however, the association may not charge  
5 a use fee against a unit owner for the use of common elements  
6 or association property unless otherwise provided for in the  
7 declaration of condominium or by a majority vote of the  
8 association or unless the charges relate to ~~expenses incurred~~  
9 ~~by~~ an owner having exclusive use of the common elements or  
10 association property.

11           (7) TITLE TO PROPERTY.--

12           (a) The association has the power to acquire title to  
13 property or otherwise hold, convey, lease, and mortgage  
14 association property for the use and benefit of its members.  
15 The power to acquire personal property shall be exercised by  
16 the board of administration. Except as otherwise permitted in  
17 subsections (8) and (9) and in s. 718.114, no association may  
18 acquire, convey, ~~lease~~, or mortgage association real property  
19 except in the manner provided in the declaration, and if the  
20 declaration does not specify the procedure, then approval of  
21 75 percent of the total voting interests shall be required.

22           (13) FINANCIAL REPORTING.--Within 90 days after the  
23 end of the fiscal year, or annually on a date provided in the  
24 bylaws, the association shall prepare and complete, or  
25 contract for the preparation and completion of ~~cause to be~~  
26 ~~prepared and completed by a third party~~, a financial report  
27 for the preceding fiscal year. Within 21 days after the final  
28 financial report is completed by the association or received  
29 ~~by the association~~ from the third party, but in no event later  
30 than 120 days after the end of the fiscal year, or such other  
31 date as is provided in the bylaws, the association shall mail

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1 to each unit owner at the address last furnished to the  
2 association by the unit owner, or hand deliver to each unit  
3 owner, a copy of the financial report or a notice that a copy  
4 of the financial report will be mailed or hand delivered to  
5 the unit owner, without charge, upon receipt of a written  
6 request from the unit owner. The division shall adopt rules  
7 setting forth uniform accounting principles and standards to  
8 be used by all associations and shall adopt rules addressing  
9 financial reporting requirements for multicondominium  
10 associations. In adopting such rules, the division shall  
11 consider the number of members and annual revenues of an  
12 association. Financial reports shall be prepared as follows:

13 (a) An association that meets the criteria of this  
14 paragraph shall prepare or cause to be prepared a complete set  
15 of financial statements in accordance with generally accepted  
16 accounting principles. The financial statements shall be  
17 based upon the association's total annual revenues, as  
18 follows:

19 1. An association with total annual revenues of  
20 \$100,000 or more, but less than \$200,000, shall prepare  
21 compiled financial statements.

22 2. An association with total annual revenues of at  
23 least \$200,000, but less than \$400,000, shall prepare reviewed  
24 financial statements.

25 3. An association with total annual revenues of  
26 \$400,000 or more shall prepare audited financial statements.

27 (b)1. An association with total annual revenues of  
28 less than \$100,000 shall prepare a report of cash receipts and  
29 expenditures.

30 2. An association which operates less than 50 units,  
31 regardless of the association's annual revenues, shall prepare

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1 a report of cash receipts and expenditures in lieu of  
2 financial statements required by paragraph (a).

3 3. A report of cash receipts and disbursements must  
4 disclose the amount of receipts by accounts and receipt  
5 classifications and the amount of expenses by accounts and  
6 expense classifications, including, but not limited to, the  
7 following, as applicable: costs for security, professional and  
8 management fees and expenses, taxes, costs for recreation  
9 facilities, expenses for refuse collection and utility  
10 services, expenses for lawn care, costs for building  
11 maintenance and repair, insurance costs, administration and  
12 salary expenses, and reserves accumulated and expended for  
13 capital expenditures, deferred maintenance, and any other  
14 category for which the association maintains reserves.

15 (c) An association may prepare or cause to be  
16 prepared, without a meeting of or approval by the unit owners:

17 1. Compiled, reviewed, or audited financial  
18 statements, if the association is required to prepare a report  
19 of cash receipts and expenditures;

20 2. Reviewed or audited financial statements, if the  
21 association is required to prepare compiled financial  
22 statements; or

23 3. Audited financial statements if the association is  
24 required to prepare reviewed financial statements.

25 (d) If approved by a majority of the voting interests  
26 present at a properly called meeting of the association, an  
27 association may prepare or cause to be prepared:

28 1. A report of cash receipts and expenditures in lieu  
29 of a compiled, reviewed, or audited financial statement;

30 2. A report of cash receipts and expenditures or a  
31 compiled financial statement in lieu of a reviewed or audited

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1 financial statement; or

2 3. A report of cash receipts and expenditures, a  
3 compiled financial statement, or a reviewed financial  
4 statement in lieu of an audited financial statement.

5  
6 Such meeting and approval must occur prior to the end of the  
7 fiscal year and is effective only for the fiscal year in which  
8 the vote is taken. With respect to an association to which the  
9 developer has not turned over control of the association, all  
10 unit owners, including the developer, may vote on issues  
11 related to the preparation of financial reports for the first  
12 2 fiscal years of the association's operation, beginning with  
13 the fiscal year in which the declaration is recorded.

14 Thereafter, all unit owners except the developer may vote on  
15 such issues until control is turned over to the association by  
16 the developer.

17 Section 16. Subsection (3) of section 718.112, Florida  
18 Statutes, is amended to read:

19 718.112 Bylaws.--

20 (3) OPTIONAL PROVISIONS.--The bylaws as originally  
21 recorded, or as amended pursuant to the procedure provided  
22 therein, may provide for the following:

23 (a) A method of adopting and amending administrative  
24 rules and regulations governing the details of the operation  
25 and use of the common elements.

26 (b) Restrictions on and requirements for the use,  
27 maintenance, and appearance of the units and the use of the  
28 common elements.

29 (c) Other provisions which are not inconsistent with  
30 this chapter or with the declaration, as may be desired. This  
31 subsection is intended to clarify existing law and applies to

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1 associations existing on the effective date of this act.

2 Section 17. Subsection (2) of section 718.113, Florida  
3 Statutes, is amended to read:

4 718.113 Maintenance; limitation upon improvement;  
5 display of flag; hurricane shutters.--

6 (2)(a) Except as otherwise provided in this section,  
7 there shall be no material alteration or substantial additions  
8 to the common elements or to real property which is  
9 association property, except in a manner provided in the  
10 declaration as originally recorded or as amended pursuant to  
11 the procedures provided therein. If the declaration as  
12 originally recorded or amended does not specify the procedure  
13 for approval of material alterations or substantial additions,  
14 75 percent of the total voting interests of the association  
15 must approve the alterations or additions. This paragraph is  
16 intended to clarify existing law and applies to associations  
17 existing on the effective date of this act.

18 (b) There shall not be any material alteration of, or  
19 substantial addition to, the common elements of any  
20 condominium operated by a multicondominium association unless  
21 approved in the manner provided in the declaration of the  
22 affected condominium or condominiums as originally recorded,  
23 or as amended pursuant to the procedures provided therein. If  
24 a declaration as originally recorded or amended does not  
25 specify a procedure for approving such an alteration or  
26 addition, the approval of 75 percent of the total voting  
27 interests of each affected condominium is required. This  
28 subsection does not prohibit a provision in any declaration,  
29 articles of incorporation, or bylaws as originally recorded or  
30 amended requiring the approval of unit owners in any  
31 condominium operated by the same association or requiring



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1 board approval before a material alteration or substantial  
2 addition to the common elements is permitted. This paragraph  
3 is intended to clarify existing law and applies to  
4 associations existing on the effective date of this act.

5 (c) There shall not be any material alteration or  
6 substantial addition made to association real property  
7 operated by a multicondominium association, except as provided  
8 in the declaration, articles of incorporation, or bylaws as  
9 said documents are originally recorded or amended pursuant to  
10 the procedures provided therein. If the declaration, articles  
11 of incorporation, or bylaws do not specify the procedure for  
12 approving an alteration or addition to association real  
13 property, the approval of 75 percent of the total voting  
14 interests of the association is required. This paragraph is  
15 intended to clarify existing law and applies to associations  
16 existing on the effective date of this act.

17 Section 18. Paragraphs (b) and (c) of subsection (1)  
18 of section 718.115, Florida Statutes, are amended to read:

19 718.115 Common expenses and common surplus.--

20 (1)

21 (b) The common expenses of a condominium within a  
22 multicondominium are the common expenses directly attributable  
23 to the operation of that condominium. The common expenses of a  
24 multicondominium association do not include the common  
25 expenses directly attributable to the operation of any  
26 specific condominium or condominiums within the  
27 multicondominium. This paragraph is intended to clarify  
28 existing law and applies to associations existing on the  
29 effective date of this act.

30 (c) The common expenses of a multicondominium  
31 association may include categories of expenses related to the

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1 property or common elements within a specific condominium in  
2 the multicondominium if such property or common elements are  
3 areas in which all members of the multicondominium association  
4 have use rights or from which all members receive tangible  
5 economic benefits. Such common expenses of the association  
6 shall be identified in the declaration or bylaws of each  
7 condominium within the multicondominium association. This  
8 paragraph is intended to clarify existing law and applies to  
9 associations existing on the effective date of this act.

10 Section 19. Subsections (1) and (4) of section  
11 718.405, Florida Statutes, are amended to read:

12 718.405 Multicondominiums; multicondominium  
13 associations.--

14 (1) An association may operate more than one  
15 condominium. For multicondominiums created on or after July 1,  
16 2000, if the declaration for each condominium to be operated  
17 by that association shall provide ~~provides~~ for participation  
18 in a multicondominium, in conformity with this section, and  
19 disclose ~~discloses~~ or describe ~~describes~~:

20 (a) The manner or formula by which the assets,  
21 liabilities, common surplus, and common expenses of the  
22 association will be apportioned among the units within the  
23 condominiums operated by the association, in accordance with  
24 s. 718.104(4)(g) or (h), as applicable.

25 (b) Whether unit owners in any other condominium, or  
26 any other persons, will or may have the right to use  
27 recreational areas or any other facilities or amenities that  
28 are common elements of the condominium, and, if so, the  
29 specific formula by which the other users will share the  
30 common expenses related to those facilities or amenities.

31 (c) Recreational and other commonly used facilities or

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1 amenities which the developer has committed to provide that  
2 will be owned, leased by, or dedicated by a recorded plat to  
3 the association but which are not included within any  
4 condominium operated by the association. The developer may  
5 reserve the right to add additional facilities or amenities if  
6 the declaration and prospectus for each condominium to be  
7 operated by the association contains the following statement  
8 in conspicuous type and in substantially the following form:  
9 RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT  
10 CONSENT OF UNIT OWNERS OR THE ASSOCIATION.

11 (d) The voting rights of the unit owners in the  
12 election of directors and in other multicondominium  
13 association affairs when a vote of the owners is taken,  
14 including, but not limited to, a statement as to whether each  
15 unit owner will have a right to personally cast his or her own  
16 vote in all matters voted upon.

17 (4) This section does not prevent or restrict the  
18 formation of a multicondominium by the merger or consolidation  
19 of two or more condominium associations. Mergers or  
20 consolidations of associations shall be accomplished in  
21 accordance with this chapter, the declarations of the  
22 condominiums being merged or consolidated, and chapter 617.  
23 Section 718.110(4) does not apply to amendments to  
24 declarations necessary to effect a merger or consolidation.  
25 This section is intended to clarify existing law and applies  
26 to associations existing on the effective date of this act.

27 Section 20. Subsection (2) of section 718.503, Florida  
28 Statutes, is amended to read:

29 718.503 Developer disclosure prior to sale;  
30 nondeveloper unit owner disclosure prior to sale;  
31 voidability.--

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1 (2) NONDEVELOPER DISCLOSURE.--

2 (a) Each unit owner who is not a developer as defined  
3 by this chapter shall comply with the provisions of this  
4 subsection prior to the sale of his or her unit. Each  
5 prospective purchaser who has entered into a contract for the  
6 purchase of a condominium unit is entitled, at the seller's  
7 expense, to a current copy of the declaration of condominium,  
8 articles of incorporation of the association, bylaws, and  
9 rules of the association, ~~as well as a copy of the question~~  
10 ~~and answer sheet provided for by s. 718.504~~ and a copy of the  
11 financial information required by s. 718.111.

12 (b) If a person licensed under part I of chapter 475  
13 provides to or otherwise obtains for a prospective purchaser  
14 the documents described in this subsection, the person is not  
15 liable for any error or inaccuracy contained in the documents.

16 (c) Each contract entered into after July 1, 1992, for  
17 the resale of a residential unit shall contain in conspicuous  
18 type either:

19 1. A clause which states: THE BUYER HEREBY  
20 ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF  
21 THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF  
22 THE ASSOCIATION, BYLAWS, RULES OF THE ASSOCIATION, AND A COPY  
23 OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION ~~AND THE~~  
24 ~~QUESTION AND ANSWER SHEET~~ MORE THAN 3 DAYS, EXCLUDING  
25 SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF  
26 THIS CONTRACT; or

27 2. A clause which states: THIS AGREEMENT IS VOIDABLE  
28 BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION  
29 TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND  
30 LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT  
31 BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE

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1 DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS,  
2 ~~AND~~ RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT  
3 YEAR-END FINANCIAL INFORMATION ~~AND QUESTION AND ANSWER SHEET~~  
4 IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE  
5 VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND  
6 THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS,  
7 EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE  
8 BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION,  
9 BYLAWS, AND RULES, ~~AND QUESTION AND ANSWER SHEET~~ IF REQUESTED  
10 IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL  
11 TERMINATE AT CLOSING.

12

13 A contract that does not conform to the requirements of this  
14 paragraph is voidable at the option of the purchaser prior to  
15 closing.

16 Section 21. Subsection (15) of section 718.504,  
17 Florida Statutes, is amended to read:

18 718.504 Prospectus or offering circular.--Every  
19 developer of a residential condominium which contains more  
20 than 20 residential units, or which is part of a group of  
21 residential condominiums which will be served by property to  
22 be used in common by unit owners of more than 20 residential  
23 units, shall prepare a prospectus or offering circular and  
24 file it with the Division of Florida Land Sales, Condominiums,  
25 and Mobile Homes prior to entering into an enforceable  
26 contract of purchase and sale of any unit or lease of a unit  
27 for more than 5 years and shall furnish a copy of the  
28 prospectus or offering circular to each buyer. In addition to  
29 the prospectus or offering circular, each buyer shall be  
30 furnished a separate page entitled "Frequently Asked Questions  
31 and Answers," which shall be in accordance with a format

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1 approved by the division and a copy of the financial  
2 information required by s. 718.111. This page shall, in  
3 readable language, inform prospective purchasers regarding  
4 their voting rights and unit use restrictions, including  
5 restrictions on the leasing of a unit; shall indicate whether  
6 and in what amount the unit owners or the association is  
7 obligated to pay rent or land use fees for recreational or  
8 other commonly used facilities; shall contain a statement  
9 identifying that amount of assessment which, pursuant to the  
10 budget, would be levied upon each unit type, exclusive of any  
11 special assessments, and which shall further identify the  
12 basis upon which assessments are levied, whether monthly,  
13 quarterly, or otherwise; shall state and identify any court  
14 cases in which the association is currently a party of record  
15 in which the association may face liability in excess of  
16 \$100,000; and which shall further state whether membership in  
17 a recreational facilities association is mandatory, and if so,  
18 shall identify the fees currently charged per unit type. The  
19 division shall by rule require such other disclosure as in its  
20 judgment will assist prospective purchasers. The prospectus or  
21 offering circular may include more than one condominium,  
22 although not all such units are being offered for sale as of  
23 the date of the prospectus or offering circular. The  
24 prospectus or offering circular must contain the following  
25 information:

26 (15) If a the condominium created on or after July 1,  
27 2000, is or may become part of a multicondominium, the  
28 following information must be provided:

29 (a) A statement in conspicuous type in substantially  
30 the following form: THIS CONDOMINIUM IS (MAY BE) PART OF A  
31 MULTICONDOMINIUM DEVELOPMENT IN WHICH OTHER CONDOMINIUMS WILL

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1 (MAY) BE OPERATED BY THE SAME ASSOCIATION. Immediately  
2 following this statement, the location in the prospectus or  
3 offering circular and its exhibits where the multicondominium  
4 aspects of the offering are described must be stated.

5 (b) A summary of the provisions in the declaration,  
6 articles of incorporation, and bylaws which establish and  
7 provide for the operation of the multicondominium, including a  
8 statement as to whether unit owners in the condominium will  
9 have the right to use recreational or other facilities located  
10 or planned to be located in other condominiums operated by the  
11 same association, and the manner of sharing the common  
12 expenses related to such facilities.

13 (c) A statement of the minimum and maximum number of  
14 condominiums, and the minimum and maximum number of units in  
15 each of those condominiums, which will or may be operated by  
16 the association, and the latest date by which the exact number  
17 will be finally determined.

18 (d) A statement as to whether any of the condominiums  
19 in the multicondominium may include units intended to be used  
20 for nonresidential purposes and the purpose or purposes  
21 permitted for such use.

22 (e) A general description of the location and  
23 approximate acreage of any land on which any additional  
24 condominiums to be operated by the association may be located.

25 Section 22. Except as otherwise provided in this act,  
26 this act shall take effect July 1, 2001.

27

28

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

30 And the title is amended as follows:

31 Delete everything before the enacting clause





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1 irregularity in the election of any director of  
2 the board of administration of a condominium;  
3 amending s. 702.09, F.S.; revising the  
4 definitions of the terms "mortgage" and  
5 "foreclosure proceedings"; amending s. 718.104,  
6 F.S., revising language with respect to  
7 declarations for the creation of a condominium;  
8 amending s. 718.106, F.S.; revising language  
9 with respect to appurtenances that pass with a  
10 condominium unit; amending s. 718.110, F.S.;  
11 revising language with respect to amendments to  
12 a declaration of condominium; amending s.  
13 718.111, F.S.; revising language with respect  
14 to the association; amending s. 718.112, F.S.;  
15 revising language with respect to bylaws;  
16 amending s. 718.113, F.S.; revising language  
17 with respect to material alterations of common  
18 elements or association real property operated  
19 by a multicondominium association; amending s.  
20 718.115, F.S.; revising language with respect  
21 to common expenses; amending s. 718.405, F.S.;  
22 revising language with respect to  
23 multicondominiums and multicondominium  
24 associations; amending s. 718.503, F.S.,  
25 relating to disclosure requirements for the  
26 sale of certain condominiums; removing the  
27 requirement that question and answer sheets be  
28 part of the closing documents; amending s.  
29 718.504, F.S.; revising language with respect  
30 to the prospectus or offering circular;  
31 providing effective dates.