

By Senator Clary

7-159A-02

1                                   A bill to be entitled  
2           An act relating to condominiums; amending s.  
3           718.203, F.S.; relieving the developer of  
4           liability for certain defects if the developer  
5           has met prescribed conditions; creating s.  
6           718.3027, F.S.; requiring prelitigation  
7           disclosure to and approval by owners; requiring  
8           a disclosure; providing that a prelitigation  
9           disclosure is not admissible in evidence;  
10          amending s. 718.301, F.S.; providing for the  
11          effect of actions taken by members of the board  
12          of administration of an association; amending  
13          s. 718.503, F.S.; providing requirements for  
14          developer disclosure in certain contracts for  
15          the sale or lease of a residential unit;  
16          amending s. 718.506, F.S.; abrogating the right  
17          to a cause of action against a developer for an  
18          oral representation or information that is not  
19          in the developer's promotional materials;  
20          providing an effective date.

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22   Be It Enacted by the Legislature of the State of Florida:  
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24           Section 1. Subsections (8) and (9) are added to  
25   section 718.203, Florida Statutes, to read:

26           718.203 Warranties.--

27           (8) If the developer has obtained from the contractor  
28   a construction payment and performance bond in the amount of  
29   the contract with the contractor which was issued by a surety  
30   licensed to do business in this state and has assigned or  
31   otherwise made available the bond or the proceeds thereof to

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

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

21 Section 2. Section 718.3027, Florida Statutes, is  
22 created to read:

23 718.3027 Prelitigation disclosure to and approval by  
24 owners.--

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

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

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

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

3 (5) A Litigation Disclosure Notice is confidential,  
4 exempt from discovery by a developer, and inadmissible in any  
5 trial or hearing. A unit owner may not waive the  
6 confidentiality of a Litigation Disclosure Notice; only the  
7 board of administration of the association may authorize a  
8 waiver of confidentiality of a Litigation Disclosure Notice.

9 Section 3. Present subsection (6) of section 718.301,  
10 Florida Statutes, is redesignated as subsection (7) of that  
11 section, and a new subsection (6) is added to that section, to  
12 read:

13 718.301 Transfer of association control.--

14 (6) Actions taken by members of the board of  
15 administration designated by the developer are considered  
16 actions taken by the developer, and the developer is  
17 responsible to the association and its members for all such  
18 actions.

19 Section 4. Paragraph (a) of subsection (1) of section  
20 718.503, Florida Statutes, is amended to read:

21 718.503 Developer disclosure prior to sale;  
22 nondeveloper unit owner disclosure prior to sale;  
23 voidability.--

24 (1) DEVELOPER DISCLOSURE.--

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

28 1. Contain the following legend in conspicuous type:  
29 THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN  
30 NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER  
31 THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND

1 RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED  
2 TO HIM OR HER BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA  
3 STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY  
4 DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL  
5 WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF  
6 ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING  
7 IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED  
8 WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT.  
9 BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE  
10 THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS  
11 REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL  
12 TERMINATE AT CLOSING.

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

26         3. If the unit has been occupied by someone other than  
27 the buyer, contain a statement that the unit has been  
28 occupied.

29         4. If the contract is for the sale or transfer of a  
30 unit subject to a lease, include as an exhibit a copy of the  
31 executed lease and shall contain within the text in

1 conspicuous type: THE UNIT IS SUBJECT TO A LEASE (OR  
2 SUBLEASE).

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

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

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

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

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

3 718.506 Publication of false and misleading  
4 information.--

5 (3) A person has no cause of action against a  
6 developer for any oral representation or information that is  
7 not contained in the developer's advertising and promotional  
8 materials, including, but not limited to, a prospectus, the  
9 items required as exhibits to a prospectus, brochures, and  
10 newspaper advertising.

11 Section 6. This act shall take effect July 1, 2002.

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14 SENATE SUMMARY

15 Relieves a condominium developer of liability for certain  
16 defects if the developer has met prescribed conditions.  
17 Requires prelitigation disclosure to and approval by  
18 condominium owners. Requires a disclosure. Provides that  
19 a prelitigation disclosure is not admissible in evidence.  
20 Provides for the effect of actions taken by members of  
21 the board of administration of an association. Provides  
22 requirements for developer disclosure in certain  
23 contracts for the sale or lease of a residential unit.  
24 Abrogates the right to a cause of action against a  
25 developer for an oral representation or information that  
26 is not in the developer's promotional materials.  
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